

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEBRASKA

AT OMAHA, NEBRASKA

GUILLERMO HERRERA, III,)	
)	
Plaintiff,)	
)	
VS.)	Case No.
)	8:15-cv-426-JMG-CRZ
UNION PACIFIC RAILROAD)	
COMPANY, a Delaware)	
corporation,)	
)	
Defendant.)	

DEPOSITION OF ROBERT STEELY

JUNE 9, 2016

REPORTED BY:	IMHOF AND ASSOCIATES, INC.
	COURT REPORTERS AND VIDEOGRAPHERS
VICTORIA IMHOF WERTZ, RPR	
CSR NO. 7999	20650 Adam Cir. 9431 Haven Ave.
	Yorba Linda, CA Suite 100
	92886 Rancho Cucamonga, CA
	91730
Job No. 160609V3	

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEBRASKA
3 AT OMAHA, NEBRASKA
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6
7
8

9 GUILLERMO HERRERA, III,)
10)
11 Plaintiff,)
12)
13 VS.)Case No.
14)8:15-cv-426-JMG-CRZ
15 UNION PACIFIC RAILROAD)
16 COMPANY, a Delaware)
17 corporation,)
18)
19 Defendant.)
20
21
22
23
24
25

DEPOSITION OF ROBERT STEELY,
taken on behalf of the Plaintiff, at 9431 Haven
Avenue in the City of Rancho Cucamonga,
California, commencing at 1:29 p.m. and concluding
at 3:53 p.m. on JUNE 9, 2016, before VICTORIA
IMHOF WERTZ, RPR, CSR No. 7999.

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1 APPEARANCES
2 For the Plaintiff: BRENT COON & ASSOCIATES, PC
3 BY: JAMES L. COX, JR., ESQ.
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5 Suite 905
6 Denver, Colorado 80210
7 (303) 756-3243
8
9 For the Defendant, UNION PACIFIC RAILROAD COMPANY
10 Union Pacific LAW DEPARTMENT
11 Railroad: BY: TORRY N. GARLAND, ESQ.
12 1400 West 52nd Avenue
13 Denver, Colorado 80221
14 (303) 405-5402
15 - AND -
16 LAMSON DUGAN & MURRAY, LLP
17 BY: DAVID J. SCHMITT, ESQ.
18 10306 Regency Parkway Drive
19 Omaha, Nebraska 68114
20 (402) 397-7300
21
22 Also present: Jerry R. Pritchett;
23 Christobal Rivero,
24 video technician
25

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18 Association National Weather Service
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20 osha.gov
21 20 - Document from the National Weather 103
22 Service Heat Index
23 21 - OSHA Technical Manual, Section III, 105
24 chapter IV, "Heat Stress"
25 22 - OSHA NIOSH document 107
26
27 INFORMATION REQUESTED
28 (None)
29 UNANSWERED QUESTIONS
30 (None)

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13:29:46 1 RANCHO CUCAMONGA, CALIFORNIA
13:29:46 2 THURSDAY, JUNE 9, 2016
13:29:47 3 1:29 p.m.
13:29:48 4
13:29:49 5 THE VIDEOGRAPHER: This is the beginning
13:29:50 6 of media number 1. We are on the record with
13:29:53 7 Robert Steely.
13:29:55 8 ROBERT STEELY,
13:29:55 9 called as a witness herein, having
13:29:55 10 first been duly sworn, was examined
13:29:55 11 and testified as follows:
13:29:55 12
13:29:55 13 EXAMINATION
13:29:55 14 BY MR. COX:
13:29:55 15 Q Mr. Steely, good afternoon.
13:29:58 16 Could you give me your full name,
13:29:59 17 please.
13:30:00 18 A Robert William Steely.
13:30:01 19 Q Where do you live?
13:30:02 20 A In Cheyenne, Wyoming.
13:30:05 21 Q How old are you?
13:30:06 22 A 42.
13:30:07 23 Q Who do you work for now?
13:30:09 24 A Union Pacific.
13:30:10 25 Q What's your job on Union Pacific now?

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13:30:12 1 A My title I hold is a welder.
 13:30:15 2 Q And are you on steel gang 8501?
 13:30:22 3 A Yes, sir.
 13:30:22 4 Q And --
 13:30:23 5 A Actually, I'm on the 8501. It's under the
 13:30:26 6 same consist, but I'm on 8519.
 13:30:29 7 Q 8519 is the gang number for your welding
 13:30:31 8 gang?
 13:30:32 9 A For the welding gang, yes, sir.
 13:30:34 10 Q Are you working currently as a welder or
 13:30:37 11 as a safety captain or both?
 13:30:39 12 A Yes -- I hold a welder position, but my
 13:30:43 13 full-time position is the safety captain.
 13:30:45 14 Q And you've been the safety captain on
 13:30:48 15 the -- and are you the safety captain for the whole
 13:30:52 16 8501 gang?
 13:30:53 17 A The whole consist that consists of 8501,
 13:30:57 18 8519, 6049 and 8503.
 13:31:01 19 Q And we have had that described to us
 13:31:03 20 earlier as a steel gang, a welding gang, a
 13:31:10 21 surfacing gang and some other -- what would the
 13:31:12 22 other gang be?
 13:31:13 23 A 6049 is an end track.
 13:31:15 24 Q That's that end track machine that they
 13:31:19 25 were talking about?

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13:31:20 1 A Yes, sir.
 13:31:20 2 Q You are the safety captain for the whole
 13:31:23 3 group?
 13:31:23 4 A The whole group.
 13:31:25 5 Q How long have you had that job?
 13:31:27 6 A Roughly five years.
 13:31:28 7 Q And what are your responsibilities as the
 13:31:31 8 safety captain?
 13:31:36 9 A I participate in the briefing in the
 13:31:38 10 morning. I scout ahead job sites for hazards. I
 13:31:47 11 provide the cooling stations in the summer months.
 13:31:52 12 I help individuals with their training. If there's
 13:31:57 13 any questions on rules from the employees, I will
 13:32:03 14 clarify things for them on the rules or I will find
 13:32:06 15 the proper answer.
 13:32:10 16 And there's some small administrative
 13:32:12 17 stuff, too, with time, ordering safety materials,
 13:32:16 18 passing out safety supplies in the morning.
 13:32:20 19 There's an array of things, but that's generally
 13:32:23 20 what I do.
 13:32:28 21 Q Okay.
 13:32:28 22 Help with training -- when a steel gang
 13:32:33 23 employee has a training module that's computerized,
 13:32:38 24 how is that given to these steel gang employees?
 13:32:42 25 A CBT training?

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13:32:44 1 Q Yes.
 13:32:45 2 A Computer-based training?
 13:32:47 3 Q Yes, sir.
 13:32:47 4 A They have changed it now to where you do
 13:32:49 5 it online. You go -- you have your user name,
 13:32:53 6 password. You log in, and depending on the
 13:32:56 7 position that you hold, you will -- your cue will
 13:33:00 8 be full of the training required to hold that
 13:33:02 9 position for the year. They go in and take the
 13:33:05 10 online courses.
 13:33:08 11 Q When did that change to online?
 13:33:10 12 A From a disk, I think this is our second
 13:33:12 13 year.
 13:33:13 14 Q Okay.
 13:33:14 15 A It used to be a disk. They would mail a
 13:33:16 16 disk out to the entire system.
 13:33:18 17 Q Every employee?
 13:33:19 18 A Yes, sir, every employee would get a disk
 13:33:21 19 mailed to their house.
 13:33:22 20 Q And that is something that they would have
 13:33:24 21 to study and then disk or somehow record that
 13:33:31 22 document that they have participated in that
 13:33:32 23 training?
 13:33:33 24 A Yes, sir. With the disk, they would just
 13:33:36 25 upload from there -- upload from their house. The

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13:33:40 1 disk would automatically connect it to a UP server,
 13:33:44 2 then they would upload the work when they are done.
 13:33:47 3 Q How do supervisors monitor what an
 13:33:50 4 employee has done and when?
 13:33:52 5 A Well, everyone is required to -- I'm
 13:33:54 6 sorry. Everyone is required to finish it by a
 13:33:58 7 certain -- to get paid, they are required to finish
 13:34:00 8 it by a certain date during the year and we just go
 13:34:03 9 into the "myupsite," you can click on employees.
 13:34:09 10 These blocks down, there will be a testing and
 13:34:13 11 training block you can click on. And then you
 13:34:15 12 enter your cost center. And that's how supervisors
 13:34:19 13 can see everyone they are in charge of and what
 13:34:22 14 percentage they have completed up to that point.
 13:34:24 15 Q I see.
 13:34:25 16 Is there any testing on the training?
 13:34:26 17 A Sure. Yeah. There are some tests that
 13:34:29 18 are given are just click-throughs that are just
 13:34:32 19 readalongs, and you get credit for them once you
 13:34:37 20 are finished. And then others have exams.
 13:34:40 21 Q Okay.
 13:34:41 22 Before it was online and before it was a
 13:34:43 23 disk, how was it done?
 13:34:45 24 A That was before my time.
 13:34:47 25 Q Oh, okay.

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13:34:48 1 A I have 12 years. And the first year I was
 13:34:51 2 involved with UP, it was a disk.
 13:34:54 3 Q What is computer-based -- CBT training,
 13:35:00 4 the computer-based training?
 13:35:01 5 A It's just the training that you are
 13:35:04 6 required to complete. FRA, I believe, requires a
 13:35:07 7 certain amount of computer-based training for
 13:35:07 8 whatever position you hold that year.
 13:35:10 9 Q It's the same on disk or online?
 13:35:11 10 A Yes, sir.
 13:35:12 11 Q All three are the same?
 13:35:14 12 A Yes, sir. They just replaced one with the
 13:35:16 13 other. I think they got tired of mailing out
 13:35:18 14 disks.
 13:35:21 15 Q Okay.
 13:35:28 16 You were the safety captain on 8501 when
 13:35:32 17 Jared Whitt suffered a heatstroke.
 13:35:38 18 Do you remember that?
 13:35:39 19 MR. SCHMITT: Objection to the form.
 13:35:40 20 Go ahead.
 13:35:41 21 THE WITNESS: I do recall.
 13:35:43 22 BY MR. COX:
 13:35:43 23 Q Were you ever advised of Mr. Whitt's
 13:35:45 24 injury, condition, effect of the injury on him?
 13:35:48 25 Did anybody on the UP ever advise you of that?

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13:35:51 1 A You mean, after he had had the injury?
 13:35:54 2 Q Yes, sir.
 13:35:55 3 A Not that I recall.
 13:35:57 4 Q Okay.
 13:35:57 5 Has anybody updated you on Guillermo
 13:36:01 6 Herrera's condition?
 13:36:03 7 A No. I have not been updated on his
 13:36:06 8 condition.
 13:36:08 9 Q Was there ever a safety standdown after
 13:36:12 10 Guillermo Herrera's injury where supervisors or the
 13:36:16 11 safety captain or anybody was updated about what
 13:36:19 12 had happened or why it happened or what his injury
 13:36:21 13 was or how he is doing? Was anything like that
 13:36:24 14 ever held?
 13:36:25 15 A I'm sure there was. Anytime there's an
 13:36:27 16 incident on a crew, it's covered in depth the next
 13:36:31 17 day again.
 13:36:34 18 Anytime there's an injury on any other
 13:36:35 19 gang, throughout the system, once we are made aware
 13:36:40 20 of that, it's covered that morning. Every injury,
 13:36:45 21 every incident is covered in the morning briefing.
 13:36:48 22 Q What's included in covering a prior
 13:36:52 23 incident in a morning job briefing?
 13:36:54 24 A That depends on the incident.
 13:36:55 25 Q Can you give me how it happened? Where?

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13:36:58 1 When? Why? Who? Was any of that discussed?
 13:37:02 2 A Do you want an example?
 13:37:05 3 Q Well, let's move to the briefing after
 13:37:07 4 Guillermo's injury.
 13:37:10 5 What occurred in that?
 13:37:11 6 A I'm sure it was the QSM97 would have been
 13:37:15 7 recovered.
 13:37:16 8 Q And that's the heat and injury prevention
 13:37:19 9 program on UP?
 13:37:21 10 A Yes, sir.
 13:37:21 11 Q And what was covered about that, if you
 13:37:24 12 recall?
 13:37:26 13 A I don't recall exactly what was covered.
 13:37:29 14 But I'm -- you know, I can just say that I'm sure
 13:37:32 15 we went over to the QSM97 again and our heat stress
 13:37:37 16 policies.
 13:37:37 17 Q Who did that? Who conducted the job
 13:37:39 18 briefing?
 13:37:40 19 A I'm so sorry. I don't want to hurt her
 13:37:44 20 ears.
 13:37:45 21 I don't recall who did it that -- the next
 13:37:48 22 day.
 13:37:49 23 Q Is other than that safety or that job
 13:37:52 24 briefing the next morning, were you ever -- or was
 13:37:55 25 anybody on the gang, to your knowledge, ever

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13:37:58 1 updated on Mr. Herrera's injury, how he was doing
 13:38:01 2 or anything like that?
 13:38:05 3 A No. Once he left, I didn't hear from
 13:38:08 4 Mr. Herrera other than a text -- a couple of texts
 13:38:12 5 I received about a backpack that he was concerned
 13:38:15 6 with.
 13:38:16 7 Q Oh, that he had left somewhere. And I
 13:38:19 8 think --
 13:38:19 9 A We had been given backpacks from a
 13:38:23 10 previous job we completed as, like, an incentive
 13:38:25 11 because we did really well on that job and we saved
 13:38:28 12 a lot of money. So sometimes UP will give you a
 13:38:31 13 jacket or a T-shirt. And they gave us a backpack.
 13:38:35 14 And he wanted to know if I could mail him his
 13:38:38 15 backpack.
 13:38:39 16 Q Were you able to do that?
 13:38:40 17 A I didn't even have enough backpacks for
 13:38:43 18 the guys that were on the crew at the time, so --
 13:38:46 19 Q Okay. All right.
 13:38:53 20 Let's -- I'm here to hopefully have you
 13:38:56 21 educate me a little bit about policies and things
 13:38:59 22 on Union Pacific Railroad.
 13:39:04 23 How are supervisors on gang 8501 supposed
 13:39:11 24 to monitor the health of the employees on the gang
 13:39:14 25 during extreme heat conditions? What are their

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13:39:17	1 responsibilities?	13:41:24	1 what is the assistant foreman's responsibilities?
13:39:19	2 A Of the supervisor?	13:41:27	2 A Well, to assist the situation. You are
13:39:21	3 Q Yes, sir.	13:41:31	3 expected to take breaks when needed, not just when
13:39:26	4 A Well, everybody is kind of responsible for	13:41:33	4 they are called for. Because in certain
13:39:28	5 themselves. Every individual out there is	13:41:35	5 situations, you are going to get mandatory breaks
13:39:32	6 responsible for themselves.	13:41:38	6 throughout the hour. But you take as many breaks
13:39:34	7 We don't leave it up to the supervisor to	13:41:43	7 as you need.
13:39:37	8 monitor everybody's well-being that day. That's	13:41:44	8 Now, if it's -- it's up to that individual
13:39:42	9 too many people for a supervisor to monitor.	13:41:47	9 to bring his health concerns to the assistant
13:39:45	10 Q How about an assistant foreman or a	13:41:51	10 because we can't tell -- I can't tell how you feel,
13:39:48	11 foreman on a segment of the gang?	13:41:54	11 just like you can't tell how I feel. Nobody knows
13:39:49	12 A That's more the way it goes.	13:41:57	12 your own body like you know your own body.
13:39:53	13 Q Oh, okay. I didn't phrase my question	13:42:01	13 That's preached every day because that's
13:39:55	14 very well.	13:42:02	14 so crucial. We need to know right away from that
13:39:57	15 Let's say that we have got a section of	13:42:05	15 individual.
13:39:59	16 the gang and let's talk about the cleanup crew.	13:42:07	16 And --
13:40:02	17 A Okay.	13:42:08	17 Q So if an individual comes to an assistant
13:40:02	18 Q Was that your understanding that that was	13:42:11	18 foreman and says, "I don't feel well. I feel
13:40:04	19 the crew that Guillermo Herrera was working on?	13:42:16	19 dizzy. I feel this. I feel that," what's the
13:40:07	20 A Yes, it was.	13:42:20	20 assistant foreman supposed to do?
13:40:07	21 Q All right.	13:42:21	21 A Well, if the individual appeared to be
13:40:08	22 The assistant foreman was Scott Nicholson;	13:42:25	22 suffering, I'm sure that that assistant foreman
13:40:11	23 is that your memory?	13:42:27	23 would take him off the line.
13:40:12	24 A Yes, sir.	13:42:31	24 Q Okay.
13:40:12	25 Q And then who would have been the foreman	13:42:33	25 Now, the -- I thought some of the UP
Page 15		Page 17	
13:40:14	1 of that?	13:42:36	1 documents talk about a buddy system in heat
13:40:14	2 A The foreman is Steve Gallop.	13:42:39	2 conditions.
13:40:18	3 Q All right.	13:42:41	3 A They do.
13:40:18	4 What is the responsibilities of the	13:42:43	4 Q But that's not a policy that's implemented
13:40:20	5 assistant foreman, the man who was with the gang or	13:42:45	5 on steel gang 8501?
13:40:24	6 crew most of the time during the day?	13:42:48	6 A Now, when they make a policy for the
13:40:26	7 What is his responsibility in terms of	13:42:52	7 entire railroad, it's hard for every crew to follow
13:40:29	8 monitoring the health of his employees working	13:42:55	8 that policy. It's kind of -- it's laid out for
13:40:32	9 under him during extreme heat conditions?	13:42:59	9 everyone to follow, but there's different ways of
13:40:35	10 A During extreme heat conditions, we use the	13:43:01	10 following the buddy system.
13:40:38	11 buddy system. But we do not have an individual	13:43:03	11 When we have people -- like I was telling
13:40:44	12 assigned to another individual. We are too large	13:43:05	12 you, we can't assign an individual to another
13:40:49	13 for that. And throughout the day, people will get	13:43:08	13 individual because most likely that individual
13:40:53	14 rotated through groups. So the way we call it is	13:43:12	14 there that day is not going to be with that other
13:40:56	15 everybody is everybody's buddy. You look out for	13:43:15	15 individual the entire day. So we have just always
13:41:00	16 your entire group.	13:43:19	16 done it that way. Everybody is everybody's buddy.
13:41:02	17 Now, if you have any issues, you take it	13:43:22	17 We use the buddy system and we each watch out for
13:41:04	18 to your assistant foreman first. And then we will	13:43:25	18 one another. You can bring any kind of problem you
13:41:07	19 work to resolve the issues from there.	13:43:28	19 are having to any person if you need assistance in
13:41:10	20 Q So if an employee is having a heat-related	13:43:31	20 any way.
13:41:13	21 issue, it's his responsibilities to go to his	13:43:32	21 And if that person then goes and gets an
13:41:17	22 assistant foreman?	13:43:35	22 assistant foreman for you, that's also find -- as
13:41:18	23 A Or just another employee. Anybody -- you	13:43:38	23 long as we are finding out about it is the most
13:41:21	24 can tell anybody.	13:43:41	24 important thing -- as long as you have brought it
13:41:22	25 Q And if it gets to an assistant foreman,	13:43:43	25 to someone's attention.

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13:43:44	1	Q And that's the policy that is taught on	13:46:20	1	8501 ever told after Jared Whitt's case that the
13:43:47	2	8501?	13:46:25	2	last person to ask how they are doing in the case
13:43:48	3	A Yes.	13:46:28	3	of a heat illness is that person?
13:43:49	4	Q Everybody is everybody's buddy?	13:46:30	4	MR. SCHMITT: Objection, form.
13:43:51	5	A Yes, sir.	13:46:31	5	Foundation.
13:43:51	6	Q Is that a fair paraphrase of the policy?	13:46:31	6	BY MR. COX:
13:43:54	7	A Yes, sir.	13:46:32	7	Q Did you ever learn that from after
13:43:55	8	Q Okay.	13:46:33	8	Mr. Whitt's injury --
13:44:02	9	Is there a medical person assigned to	13:46:35	9	MR. SCHMITT: Same objection -- sorry,
13:44:05	10	8501?	13:46:37	10	Jim.
13:44:08	11	A Not a medical person, no.	13:46:38	11	BY MR. COX:
13:44:09	12	Q And I'm drawing an analogy in the Army, a	13:46:38	12	Q -- that you cannot rely upon the person
13:44:14	13	platoon might have a medic, for example, a person	13:46:40	13	suffering the heat illness to tell you how he is
13:44:17	14	with medical training.	13:46:43	14	doing?
13:44:19	15	On 8501, is there any person with any	13:46:43	15	MR. SCHMITT: Same objections and
13:44:22	16	medical training assigned to the gang?	13:46:45	16	relevancy to this case.
13:44:25	17	A Like, a qualified EMT or something?	13:46:46	17	Go ahead.
13:44:29	18	Q Yes, sir.	13:46:48	18	THE WITNESS: Could you say it one more
13:44:30	19	A No.	13:46:50	19	time?
13:44:34	20	Q Have you been provided any medical	13:46:51	20	BY MR. COX:
13:44:36	21	training as it relates to heat illness different	13:46:51	21	Q Sure.
13:44:41	22	than the training program that UP has or in	13:46:52	22	I'm --
13:44:45	23	addition to the training program that UP has?	13:46:52	23	A Were we taught?
13:44:51	24	A No, I have no --	13:46:53	24	Q I'm happy to.
13:44:54	25	Q Do you know -- and I will ask -- but do	13:46:55	25	I will give you this background: After
Page 19			Page 21		
13:44:57	1	you happen to know whether Mr. Diaz has any medical	13:46:57	1	Mr. Whitt's injury, there were several expert
13:45:00	2	training?	13:47:01	2	witnesses that were involved in assessing the
13:45:01	3	A I do not know that.	13:47:02	3	safety, the heat injury prevention program on
13:45:11	4	Q What is the responsibility of a supervisor	13:47:07	4	Union Pacific Railroad.
13:45:14	5	foreman or assistant foreman if he is advised of or	13:47:08	5	One of their pieces of advice was that the
13:45:20	6	detects in an employee, signs or symptoms of	13:47:10	6	last person to rely on on how they are doing in
13:45:24	7	heat-related illness?	13:47:17	7	case of a heat illness or heat exhaustion is that
13:45:26	8	MR. SCHMITT: Objection, form.	13:47:20	8	person.
13:45:28	9	Go ahead.	13:47:22	9	Were you ever advised of that?
13:45:29	10	THE WITNESS: Well, to get him cooled down	13:47:23	10	MR. SCHMITT: Objection, form.
13:45:31	11	immediately, we are going to put him in a truck,	13:47:24	11	Foundation. Relevancy and that the witnesses were
13:45:34	12	cooling station. Get him off the track.	13:47:27	12	hired for purposes of litigation.
13:45:41	13	BY MR. COX:	13:47:31	13	Go ahead.
13:45:41	14	Q And what if his condition doesn't improve?	13:47:32	14	THE WITNESS: I don't recall ever being
13:45:48	15	A Well, it would depend on how -- what the	13:47:34	15	taught that.
13:45:51	16	individual was suffering from. If he was just	13:47:35	16	BY MR. COX:
13:45:54	17	having cramps -- or it would depend on the severity	13:47:35	17	Q Okay.
13:45:59	18	of his symptoms.	13:47:36	18	You are taught in UP documents that one of
13:46:02	19	Q Okay.	13:47:38	19	the signs of heat illness is bad judgment or
13:46:08	20	Well --	13:47:44	20	confusion.
13:46:08	21	A You have to rely on the person to inform	13:47:47	21	Do you remember hearing those words in the
13:46:10	22	you of what's going on with their body.	13:47:49	22	QSM?
13:46:12	23	Q Right.	13:47:50	23	A Yes, sir.
13:46:13	24	Do you remember the -- or were you ever	13:47:50	24	Q What does that mean to you, that a person
13:46:15	25	told -- or was -- to your knowledge, was anybody on	13:47:52	25	suffering a heatstroke or heat exhaustion is

Page 22			Page 24		
13:47:58	1	confused or exercising bad judgment -- may exercise	13:51:02	1	available to every employee, every single day.
13:48:02	2	bad judgment? What does that mean to you?	13:51:08	2	We have made sure that we had enough
13:48:09	3	A I apologize.	13:51:11	3	cooling stations for every employee for -- at least
13:48:10	4	Q That's all right.	13:51:16	4	for the required amount or more. We can cover well
13:48:13	5	A I will try it.	13:51:22	5	more than 50 percent of our people in air
13:48:18	6	I have had this for a month.	13:51:25	6	conditioning at one time, if need be.
13:48:19	7	Q And there's water there, too, if you need	13:51:27	7	Q Those include truck, machines?
13:48:27	8	it.	13:51:29	8	A Those include trucks, machines, double RS.
13:48:32	9	We were referring to the advice -- and we	13:51:32	9	Q What's a double RS?
13:48:34	10	will go through it in a minute -- in the QSM, the	13:51:35	10	A It's a pad-laying machine. It can hold
13:48:37	11	training program of the UP for heat injury	13:51:37	11	about 25 guys.
13:48:40	12	prevention -- that a person suffering a heat	13:51:39	12	Q Okay.
13:48:43	13	injury, one of the signs or symptoms is that they	13:51:39	13	A Or our band van, which is a troop
13:48:47	14	are confused or they may exercise bad judgment.	13:51:44	14	transporter. It has air conditioning. And each
13:48:51	15	What does that mean to you?	13:51:47	15	one of these air conditioning machines is -- I
13:48:55	16	A Well, you can tell by talking to someone	13:51:51	16	think we are down to maybe three machines that
13:48:57	17	if they are confused, if they are competent	13:51:53	17	don't have air conditioning that are even on the
13:49:02	18	answering your questions -- you know, answering	13:51:55	18	track during this process.
13:49:06	19	correctly to what you are asking them. I wouldn't	13:51:57	19	Q Okay.
13:49:08	20	say a person is confused.	13:52:00	20	On 8501, what were the cooling stations on
13:49:13	21	Q Okay.	13:52:07	21	July 25th and 26th, 2015?
13:49:13	22	But I mean, what does that tell you in	13:52:11	22	A Well, they would have been the double RS.
13:49:15	23	terms of whether or not you should be concerned or	13:52:14	23	They would have been --
13:49:18	24	not about a person's condition?	13:52:16	24	Q That's a machine?
13:49:20	25	A We have to look for all signs.	13:52:17	25	A Yes, sir. That's our largest machine that
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13:49:23	1	Q Okay.	13:52:19	1	holds the most people at one time.
13:49:41	2	To your knowledge, what did Union Pacific	13:52:21	2	Q Is that commonly referred to as a "cooling
13:49:43	3	Railroad do on gang 8501 after Jared Whitt's heat	13:52:24	3	station" on the gang?
13:49:50	4	injury to guard against another heat-related injury	13:52:26	4	A Yeah.
13:49:55	5	on gang 8501 happening again?	13:52:26	5	Q Okay.
13:49:59	6	MR. SCHMITT: Objection, form.	13:52:26	6	A Because that's the best spot. They have
13:49:59	7	Foundation.	13:52:29	7	got a great air conditioner. It's a large machine.
13:50:01	8	THE WITNESS: Well, we increased our --	13:52:34	8	You can house a lot of people at one time. They
13:50:07	9	our awareness of it -- for one. It's beat into	13:52:37	9	have also got a refrigerator in there that holds
13:50:12	10	your head every single morning of the summer and	13:52:41	10	cold drinks.
13:50:16	11	even leading into the summer and even after the	13:52:42	11	Q What is that RR -- what do you call that?
13:50:19	12	summer. It's something that's covered every single	13:52:44	12	A Double RS.
13:50:23	13	day in our job briefing.	13:52:45	13	Q Is that a UP machine or a contractor's
13:50:25	14	BY MR. COX:	13:52:48	14	machine?
13:50:25	15	Q And what is covered -- or what advice is	13:52:49	15	A It's a contractor's machine.
13:50:28	16	given or -- in the job briefing?	13:52:50	16	Q Where is it located in the sequence of
13:50:31	17	A To pay attention to your body, the signs,	13:52:52	17	events in the steel gang?
13:50:36	18	the fatigue, the cramps, to drink plenty of water.	13:52:54	18	A That's towards the front. That is behind
13:50:40	19	We set up cooling stations, we had cooling stations	13:52:57	19	the tie straightening process and clip removal
13:50:43	20	before, but we probably improved upon them. We	13:53:01	20	process.
13:50:47	21	have misters now, fan misters. We get an abundance	13:53:02	21	Q Okay.
13:50:52	22	of fruit every day --	13:53:02	22	A It's actually what lifts the rail up, you
13:50:54	23	Q Okay.	13:53:04	23	take the pads out, put the new pads in. Or if you
13:50:54	24	A -- for the individuals to start their day	13:53:09	24	are laying rail, it's the machine that lays the
13:50:56	25	off with. There's an abundance of sports drinks	13:53:13	25	rail out, tears the old rail out. It's towards the

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13:53:16 1 front.
 13:53:16 2 Q What else? What other conditioned places
 13:53:19 3 are there?
 13:53:20 4 A Like I said, there's the band van -- I
 13:53:22 5 keep calling it a "band van," but it's a personnel
 13:53:25 6 carrier. That's located in the center of the gang.
 13:53:27 7 It holds about 10 to 13 people with seats and air
 13:53:32 8 conditioning.
 13:53:33 9 Now each of our clippers have air
 13:53:37 10 conditioning, also.
 13:53:39 11 Q Those are clipper or declipper machines?
 13:53:42 12 Are those P-cars?
 13:53:45 13 A P-cars.
 13:53:46 14 Q So the -- were the cabs on the P-cars in
 13:53:49 15 July of 2015 -- were those cabs air conditioned?
 13:53:53 16 A That, I don't recall.
 13:53:56 17 Q Okay.
 13:53:56 18 All right.
 13:53:56 19 What else?
 13:53:58 20 A And then there's the tents that I put out.
 13:54:02 21 Those aren't really -- they are considered cooling
 13:54:05 22 stations, but they don't have AC. That's a shaded
 13:54:08 23 tent that's set up with coolers. There will be
 13:54:11 24 fruit, drinks, misting fans, sunscreen, Sqwinchers.
 13:54:25 25 It's a -- set up with anything you need -- neck

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13:54:30 1 shades, Miracools, we use a lot of Miracools.
 13:54:38 2 Q I want to ask you -- next exhibit let me
 13:54:46 3 hand you 10. I'm sorry I don't have a bigger
 13:54:50 4 picture, but this is a text.
 13:54:52 5 Is that a photograph of the tent that you
 13:54:55 6 are talking about?
 13:54:59 7 A That's really, really small, but from what
 13:55:03 8 I can see, yes, sir, that would have been -- that
 13:55:08 9 probably would have been even one of mine.
 13:55:11 10 Q Okay.
 13:55:13 11 Let me -- let me read you the text on
 13:55:15 12 there. It's a text from Joe Linford -- and you
 13:55:18 13 know who Joe Linford is?
 13:55:22 14 A Yes, sir.
 13:55:22 15 Q -- to, I think, Mr. Rolow. And
 13:55:28 16 Mr. Linford sent him a photo of that tent. And on
 13:55:34 17 July 25th, 2015 -- and Mr. Rolow texted back to
 13:55:44 18 Mr. Linford, quote, "Get more if you need them."
 13:55:49 19 And he is referring to -- we think -- to
 13:55:53 20 those tents.
 13:55:55 21 On July 5th, how many of these tents were
 13:55:57 22 on the gang?
 13:55:58 23 A Two.
 13:55:59 24 Q And where would they be located?
 13:56:02 25 A Now, I set those up, but I can't tell you

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13:56:05 1 exactly where they were located that day.
 13:56:07 2 Q Okay.
 13:56:08 3 A Exact mileposts, I can't say. I have to
 13:56:11 4 do it where it's accessible, also. The tents
 13:56:14 5 go -- because a lot of times, there's not a right
 13:56:17 6 of way road. So you have to put the tents where
 13:56:20 7 they are going to be passed by. It's a place for
 13:56:22 8 the guys to cool off, restock their ice, restock
 13:56:26 9 their cold drinks, Sqwinchers, if they need them, a
 13:56:32 10 piece of fruit -- but they are strategically placed
 13:56:36 11 where each group will hit each of them throughout
 13:56:39 12 the day.
 13:56:40 13 Q All right.
 13:56:41 14 And are these -- are those the only two
 13:56:43 15 places other than the machines?
 13:56:47 16 A No.
 13:56:47 17 Q What else is there?
 13:56:49 18 A There's all of the trucks.
 13:56:51 19 Q Well, I mean, other --
 13:56:53 20 A Yeah, when we have an abundance of
 13:56:55 21 trucks -- there's probably -- I would hate to
 13:56:58 22 speculate on a number, but there's at least 10
 13:57:00 23 trucks throughout the gang.
 13:57:02 24 Q Okay.
 13:57:02 25 A At least.

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13:57:03 1 Q Is there a CPI or a container on site to
 13:57:06 2 cool in -- with air conditioning?
 13:57:09 3 A We have used that before.
 13:57:12 4 Q Was it in use on 8501 on the -- in July
 13:57:17 5 of '15?
 13:57:18 6 A It was at the job briefing area.
 13:57:20 7 Q In Onaga?
 13:57:22 8 A Yes.
 13:57:24 9 Q And how far was the job from that cooling
 13:57:27 10 station? On July --
 13:57:31 11 A This cooling station?
 13:57:33 12 Q No, no.
 13:57:33 13 A Or the CPI.
 13:57:35 14 Q The CPI?
 13:57:37 15 A Well, the CPI was not being utilized as a
 13:57:41 16 cooling station that day. It's a very hard piece
 13:57:44 17 to move.
 13:57:44 18 Q Right.
 13:57:45 19 A It's like a big connection box.
 13:57:48 20 Q Where was it located?
 13:57:50 21 A It was located in our job briefing area
 13:57:52 22 because that's where the foremen have their
 13:57:55 23 foremen's meeting every morning is inside the CPI
 13:58:00 24 trailer.
 13:58:00 25 Q And in July, that was in Onaga, Kansas?

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13:58:04	1	A It was in Onaga.	14:00:17	1	more on on our teams to help to try to prevent
13:58:06	2	Q All right.	14:00:20	2	anything from happening.
13:58:07	3	Now, let's talk about Mr. Herrera.	14:00:21	3	Q How many members -- there was you -- I
13:58:10	4	Did you know Guillermo Herrera before	14:00:23	4	assume you are on the IT team?
13:58:11	5	his heat injury?	14:00:26	5	A I'm the I-team leader. I've been the
13:58:14	6	A Yes.	14:00:29	6	I-team leader for at least four years.
13:58:16	7	Q Tell me what you knew about Guillermo. He	14:00:32	7	Q And how many members of the gang are on
13:58:18	8	had been on the gang about how long?	14:00:33	8	the team?
13:58:20	9	A Oh, I don't know how long he had been on	14:00:34	9	A With all of the rollover this year right
13:58:22	10	the gang. I would have to look. We get so many	14:00:37	10	now?
13:58:25	11	people, that's hard for me to say.	14:00:38	11	Q Let's talk about July '15.
13:58:29	12	Q There is a lot of revolving doors on these	14:00:41	12	A I couldn't say a definite number, but I
13:58:34	13	steel gangs, isn't there? Guys come and go, get in	14:00:43	13	would assume -- I don't want to assume. I had at
13:58:36	14	and get out?	14:00:46	14	least eight members --
13:58:36	15	A This year. Generally, we had the same	14:00:47	15	Q All right.
13:58:40	16	crew for a substantial amount of time. I know he	14:00:47	16	A -- that would have been on the I-team at
13:58:45	17	was on us whenever we were on wood and on the	14:00:49	17	that time.
13:58:47	18	double RS.	14:00:50	18	Q How about your observations of his work
13:58:48	19	Q Okay.	14:00:52	19	ethic?
13:58:48	20	A But I can't say how long. I can't say	14:00:53	20	A I had done observations on Mr. Guillermo,
13:58:48	21	that for sure for an answer.	14:00:56	21	but they were always when he was running a spike
13:58:48	22	Q Describe Guillermo to me.	14:00:59	22	puller. I do recall doing observations, because he
13:58:52	23	A He is a nice guy. I considered him a	14:01:03	23	was on the I-team. And those people are always a
13:58:55	24	friend. He is our IT, member of our I-team, which	14:01:05	24	little more willing to participate in being
13:58:59	25	is our safety team, total safety culture team that	14:01:07	25	observed. You get some guys that have been out
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13:59:03	1	we have.	14:01:10	1	here for 20 years that just don't want to
13:59:04	2	Q On the gang?	14:01:12	2	participate, so you don't ask them a lot because
13:59:04	3	A On our gang. He was a member of that. He	14:01:15	3	you have to ask someone permission to observe them.
13:59:08	4	had always been a member of that since he had first	14:01:18	4	You can't just go observe someone and -- it's not
13:59:10	5	come to the gang. He had always been a member. I	14:01:21	5	allowed.
13:59:14	6	can't say how long, though. But I know he attended	14:01:21	6	Q I see.
13:59:17	7	numerous, numerous IT meetings.	14:01:22	7	I was speaking more about -- was he a hard
13:59:20	8	Q And tell me a little bit more about what	14:01:25	8	worker?
13:59:22	9	the IT team was about.	14:01:25	9	A He was a good worker.
13:59:25	10	A I-team was what we used to promote our	14:01:27	10	Q Did you ever observe in him any medical
13:59:27	11	safety culture process on 8501. And it's what we	14:01:29	11	conditions or any concerns about his physical
13:59:31	12	used to promote our TSC program systemwide.	14:01:32	12	health -- physical abilities?
13:59:36	13	Q What is --	14:01:36	13	A No -- he had a glitch. But -- like in his
13:59:37	14	A "Total Safety Culture" is the employee's	14:01:41	14	cheek.
13:59:39	15	driven safety program through Union Pacific. It's	14:01:43	15	Q Oh, you mean a twitch?
13:59:43	16	employee driven. And we have facilitators that	14:01:45	16	A No, it didn't twitch. It would, like,
13:59:48	17	visit our gang every other half, and we hold a	14:01:47	17	droop sometimes and it only happened every now and
13:59:55	18	meeting.	14:01:51	18	then. And I asked him about it, but he just kind
13:59:55	19	Basically, it's an observation process	14:01:55	19	of joked about it. And it would only be there and
13:59:57	20	where you can volunteer to observe others working.	14:01:59	20	then it would be gone.
14:00:00	21	And then you point out maybe the flaws that they	14:02:00	21	Q So it's a glitch or what you are calling a
14:00:03	22	have, maybe the red zones they are putting	14:02:04	22	droop in his right cheek?
14:00:06	23	themselves in that they are not aware of. We do	14:02:06	23	A I don't recall what cheek it was. I just
14:00:09	24	observation cards and comprise data to pinpoint	14:02:08	24	remember talking to him and I'm like, "What's going
14:00:13	25	where our weak spots are, where we need to focus	14:02:11	25	on? What's wrong with your cheek?" And he would

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14:02:13	1 just laugh about it.	14:04:22	1 Q Okay.
14:02:15	2 "Nothing. What's wrong with yours?"	14:04:23	2 A The next time I saw Mr. Herrera was
14:02:18	3 I didn't get personal with him.	14:04:25	3 probably -- oh, maybe it was probably around 9:00
14:02:20	4 Q Did that interfere with his ability to do	14:04:30	4 to 10 o'clock that morning.
14:02:24	5 his job?	14:04:32	5 Q Okay.
14:02:25	6 A No, no, he was a good worker.	14:04:33	6 What was his condition or circumstances
14:02:27	7 Q Did it cause you any concern about his	14:04:34	7 under which you saw him?
14:02:30	8 physical condition?	14:04:36	8 A Well, I had just set up one of our cooling
14:02:31	9 A No, he never showed me anything that -- I	14:04:40	9 stations. And I came from the front of the gang
14:02:35	10 mean, he was always a good, strong kid.	14:04:42	10 back. That's how it usually works, front starts
14:02:38	11 Q Did anything about his speech ever concern	14:04:45	11 first. And when I made it to the cleanup, that's
14:02:40	12 you?	14:04:49	12 when Mr. Nicholson got ahold of me. And when I
14:02:42	13 I mean, not his language, but his -- how	14:04:51	13 talked to Scott, that's when he said he had an
14:02:46	14 he talked.	14:04:54	14 individual that wasn't feeling good or needed a
14:02:50	15 A Well, he kind of talked funny sometimes.	14:04:56	15 break. And he was in the mechanic's truck taking a
14:02:54	16 But he was just being humorous. It wasn't anything	14:05:03	16 break. So I talked to him after that.
14:02:57	17 permanent. He was just -- that's the way Guillermo	14:05:05	17 Q Who is "him"?
14:03:00	18 was. He was always kind of joking around with you.	14:05:07	18 A Oh, Mr. Guillermo.
14:03:03	19 Q Did he have any permanent --	14:05:09	19 Q Okay.
14:03:05	20 A He didn't have any permanent speech	14:05:10	20 A I went to the truck where he was at and I
14:03:08	21 impediments or anything that I knew of, no. But he	14:05:12	21 asked him what was going on. And he --
14:03:13	22 talked weird all of the time. You could never take	14:05:14	22 Q Okay.
14:03:16	23 the guy seriously because he was kind of joking	14:05:16	23 A -- said he needed a break.
14:03:20	24 around so much.	14:05:18	24 Q Okay.
14:03:21	25 Q Okay.	14:05:19	25 A I said, "All right. We will take as long
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14:03:22	1 A That's one of the things I always liked	14:05:22	1 as you need." I said, "I'm going to be back
14:03:23	2 about him, he always had a good sense of humor.	14:05:25	2 through the gang here in a bit and I will check on
14:03:28	3 Q Okay.	14:05:28	3 you then."
14:03:28	4 And you would have a lot of interaction	14:05:30	4 Q Okay.
14:03:29	5 with him on this I-team gang?	14:05:31	5 He is sitting in the mechanic's truck
14:03:31	6 A I-team?	14:05:33	6 because it's air conditioned?
14:03:32	7 Q Yeah, I-team.	14:05:35	7 A Yes, sir.
14:03:34	8 A I had a lot of interaction with him on the	14:05:37	8 Q When did you -- is that the extent of the
14:03:36	9 I-team and just on the track itself.	14:05:38	9 conversation?
14:03:38	10 Q Okay.	14:05:39	10 A Pretty much. I asked him how he was doing
14:03:41	11 Did you ever observe Mr. Herrera -- the	14:05:41	11 that day. He said he was doing fine, he just
14:03:44	12 morning of July 26th, for your reference -- that's	14:05:44	12 needed a break. I said, "All right. Just watch it
14:03:46	13 the day he had the heat injury -- did you ever see	14:05:47	13 and make sure you are drinking plenty of water." I
14:03:50	14 him any time that morning of July 26th at the job	14:05:53	14 probably would have said -- I can't say the exact
14:03:55	15 briefing, on the bus, working on the gang?	14:05:53	15 words I said --
14:03:59	16 Anything like that?	14:05:53	16 Q I understand.
14:04:00	17 A The first time I recall -- I mean, I know	14:05:54	17 A -- because I talk to too many people. But
14:04:04	18 I saw him at the job briefing. I see every single	14:05:54	18 I would have told him the same thing I told
14:04:08	19 individual at the job briefing every morning.	14:05:54	19 everybody, you know? "Okay. Well, if it gets
14:04:09	20 Q Okay.	14:05:57	20 worse, let us know. And, you know, make sure you
14:04:10	21 A I get up on the podium, and I talk and	14:05:59	21 are drinking plenty of water and take care of
14:04:12	22 look at every single person out there.	14:06:02	22 yourself. All right? Don't overexert yourself
14:04:16	23 Q Okay.	14:06:06	23 today. Don't."
14:04:16	24 A So at some point on the job briefing, if I	14:06:07	24 Q Okay.
14:04:19	25 saw him anything about him, I couldn't tell you.	14:06:08	25 When did you see him next?

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14:06:10	1 A It probably would have been within an hour	14:08:29	1 Q Was one of the things he discussed with
14:06:11	2 to an hour and a half. It was when I went back	14:08:31	2 you about Scott Nicholson and -- a concern he might
14:06:14	3 through the gang one more time, restocked some	14:08:33	3 have about Scott Nicholson -- did he ever discuss
14:06:17	4 things. And when I came back to the end of the	14:08:36	4 with you that he was not using the P-car to insert
14:06:21	5 gang, he was back up on the track.	14:08:42	5 or take off the clips?
14:06:27	6 Q And did you speak with him?	14:08:45	6 A No, I don't recall that.
14:06:29	7 A Yes, then I did. I wanted to check on him	14:08:48	7 Q Would you expect an assistant foreman to
14:06:31	8 again. So I left my truck, went and pulled him off	14:08:50	8 use the P-car if it were operating properly?
14:06:36	9 and talked to him and said, "How are you doing?"	14:08:54	9 MR. SCHMITT: Objection to form.
14:06:40	10 He said he felt better, felt fine. And	14:08:55	10 Go ahead.
14:06:42	11 then we talked a little more, but we didn't really	14:08:56	11 THE WITNESS: The P-car --
14:06:45	12 talk about his heat -- how he felt or anything. He	14:08:57	12 BY MR. COX:
14:06:48	13 wanted to talk about -- he was pretty -- Guillermo	14:08:57	13 Q Yes.
14:06:51	14 could be very outspoken. That's another reason I	14:08:58	14 A -- to take the clips off?
14:06:54	15 liked him on my I-team because he had no problems	14:08:59	15 Q Yes.
14:06:59	16 bringing things up.	14:09:01	16 A Yes, I will.
14:07:00	17 But I don't think he was getting along	14:09:02	17 Q That's why it's there, right?
14:07:02	18 with the foreman back there -- new assistant	14:09:03	18 A Well, it's a declipper.
14:07:06	19 foreman. Because he told me, "This guy doesn't do	14:09:05	19 Q I mean, it's a machine that is used to
14:07:08	20 it right. He doesn't do it my way."	14:09:08	20 declip the rail?
14:07:11	21 And I'm -- I told him, "Look, he is new	14:09:09	21 A Yes, sir, what it's designed to do -- or
14:07:13	22 here. He is an assistant foreman. We have got to	14:09:13	22 clip it up.
14:07:15	23 work with him. You've been on the cleanup crew for	14:09:13	23 Q And describe what it's like to try to
14:07:18	24 a long time. And you know what's going on back	14:09:16	24 remove clips by hand.
14:07:21	25 here, so help him out, show him a better way or	14:09:18	25 A Well, it's -- I guess you would say a
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14:07:25	1 whatever you have got to do."	14:09:21	1 "pain." If there's a machine right there -- but
14:07:28	2 He was pretty -- he seemed pretty	14:09:25	2 generally, we use the P-car to take the clips off.
14:07:30	3 disgruntled about having to work the way -- with	14:09:29	3 I mean, I don't see why anyone wouldn't.
14:07:33	4 the guy with the new assistant. Because Scott had	14:09:32	4 Q All right.
14:07:37	5 not been with us very long. I don't know how long,	14:09:33	5 Any other -- oh, in that time when you
14:07:42	6 but he hadn't been very long.	14:09:35	6 come back the second time, he said he was feeling
14:07:42	7 Q How long Scott -- "Nichols" or	14:09:39	7 better, did you talk anymore with him about how he
14:07:44	8 "Nicholson" -- how long he had been an assistant	14:09:41	8 was doing, or anything like that?
14:07:47	9 foreman or whether he had ever been an assistant	14:09:43	9 A I basically told him not to do anything,
14:07:50	10 foreman on a steel gang or on concrete ties before?	14:09:48	10 to be there, to help Mr. Nicholson -- "Nicholson"
14:07:54	11 A Now, I do remember having a conversation,	14:09:53	11 or "Nichols." Not sure what his name was.
14:07:57	12 and he had experience as an assistant foreman. But	14:09:57	12 Q Assistant foreman?
14:08:00	13 at this time, I can't say. I can't even say what	14:09:58	13 A Yeah, assistant foreman. Because
14:08:02	14 other gang he came from. I would have known then	14:09:59	14 Guillermo had experience back there, but I told
14:08:04	15 because I had a meeting with every single new	14:10:02	15 him, "Don't do anything and don't overexert
14:08:06	16 person on the gang, I have a briefing with them the	14:10:05	16 yourself. If you already felt queezy this morning
14:08:09	17 day they arrive.	14:10:08	17 or however you felt, just don't put yourself back
14:08:10	18 Q Okay.	14:10:11	18 in a bad situation."
14:08:11	19 When you walked up to him for the second	14:10:13	19 Q Did he do --
14:08:14	20 time, he was on the track?	14:10:14	20 A We didn't talk much about his health after
14:08:16	21 A Yeah, he was walking on the track. And I	14:10:16	21 that. He didn't say he was -- he didn't even bring
14:08:20	22 told him to come down the shoulder, and he came	14:10:19	22 his health back up. If I wouldn't have talked
14:08:22	23 down and we talked. Because we never tried to have	14:10:21	23 about his health, I think the only thing he would
14:08:25	24 a conversation right up to the middle of the track.	14:10:25	24 have talked to me about is how he didn't like
14:08:27	25 We step off to the side.	14:10:27	25 working with that assistant foreman.

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14:10:29	1	Q When you were there, did you make an	14:12:23	1	supply trailer, also, and I keep most of my stuff
14:10:31	2	observation of how many people were working on that	14:12:26	2	for the day in there. I will keep the fruit in the
14:10:33	3	cleanup crew at that time?	14:12:30	3	CPI box because --
14:10:35	4	A I -- I observed them, sure. But I can't	14:12:32	4	Q Keep it fresh?
14:10:38	5	say how many people were there for sure.	14:12:33	5	A Yes, AC stays on.
14:10:40	6	Q All right.	14:12:36	6	Q I didn't mean to mislead you, but you
14:10:40	7	A There was at least four to five.	14:12:39	7	drove back to Onaga?
14:10:42	8	Q We know Scott Nicholson was there.	14:12:40	8	A Yes, I did.
14:10:44	9	A Yeah.	14:12:41	9	Q How far was Onaga from where you all were
14:10:45	10	Q We know Guillermo Herrera was there. We	14:12:43	10	working?
14:10:47	11	know a man named Dickison was there --	14:12:44	11	A I don't recall how far that is.
14:10:50	12	A Dennis?	14:12:45	12	Q All right. I interrupted you.
14:10:51	13	Q Dennis Dickison.	14:12:46	13	You said later that afternoon you had gone
14:10:53	14	A Yep.	14:12:48	14	back to Onaga to restock, resupply.
14:10:53	15	Q He was on light duty at the time; is that	14:12:52	15	And I was asking you when did you first
14:10:56	16	right?	14:12:55	16	become aware? Tell me.
14:10:56	17	A I don't recall that. I don't know if he	14:12:57	17	A The timekeeper -- I was in the trailer,
14:10:58	18	was or not. I can't recall.	14:13:00	18	because I went back in the office trailer. And the
14:10:59	19	Q If his testimony will be that he was on	14:13:03	19	timekeeper had said, "They are bringing Guillermo
14:11:01	20	light duty and not able to do anything physical, he	14:13:06	20	in."
14:11:05	21	had a 15-pound lifting restriction --	14:13:08	21	Q And the timekeeper is who?
14:11:09	22	A I do recall that now.	14:13:10	22	A Matt Hughes.
14:11:10	23	Q The railroad agreed he could come back to	14:13:12	23	Q And he said, "They are bringing Guillermo
14:11:13	24	work as long as he stayed on his machine.	14:13:16	24	in."
14:11:15	25	A I don't know if there was a special	14:13:17	25	What did that mean to you?
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14:11:17	1	arrangement. But if he couldn't lift more than 15	14:13:19	1	A That means, to me, he started feeling bad
14:11:20	2	pounds, we would have had him run the machine	14:13:22	2	again, so we took him off the track and just said,
14:11:23	3	instead of lifting anything.	14:13:24	3	"You know, you are not going to be out here
14:11:26	4	Q Okay.	14:13:28	4	anymore."
14:11:27	5	Did you see anyone else there when you	14:13:29	5	Q "Bringing him in"? Bringing him in to
14:11:28	6	were talking to Guillermo Herrera and you said,	14:13:33	6	where?
14:11:30	7	"Don't do anything strenuous"?	14:13:33	7	A We would have brought him in the CPI
14:11:33	8	A No, I don't recall talking to anyone else	14:13:36	8	container there. Like I said, we have fruit in
14:11:37	9	except Scott.	14:13:40	9	there, and it's very well air conditioned.
14:11:38	10	Q Did you send anybody back to the cleanup	14:13:42	10	Basically, you are not going to leave them out
14:11:42	11	crew to help doing the physical work?	14:13:44	11	there on the track all day, even in a truck or
14:11:45	12	A No, I am not in charge of that. We were	14:13:46	12	something. It's closer. It's in Onaga. There's
14:11:48	13	short manpower, I'm sure. We rarely hold a full	14:13:49	13	going to be people on the job right there in the
14:11:53	14	consist.	14:13:51	14	job briefing area that can stay with him, they can
14:11:53	15	Q When did you first become aware of	14:13:52	15	observe him.
14:11:57	16	Mr. Herrera's heat illness?	14:13:55	16	Under my thinking, he was going to just
14:11:59	17	A It would have been later that afternoon.	14:13:57	17	sit out the rest of the day, because he started
14:12:01	18	I had driven back to the job briefing, because I	14:14:00	18	feeling bad, and that's why we were going to take
14:12:05	19	keep numerous coolers there -- and I'm just going	14:14:01	19	him out.
14:12:07	20	to restock my truck and go back out.	14:14:03	20	Q Sit out the rest of the day in that CPI,
14:12:10	21	Q To the cooling station in Onaga? The	14:14:04	21	the cooling container that we talked about?
14:12:13	22	container?	14:14:06	22	A Yeah.
14:12:13	23	A Yes, that's -- we have never really called	14:14:07	23	Q I'm sorry we called it a "cooling
14:12:16	24	it a "cooling station." It's just a CPI box. I	14:14:07	24	station." I think in the other case we did.
14:12:20	25	don't keep them in there. I have my own safety	14:14:09	25	A We were utilizing it as a cooling station

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4:14:11	1	then. But you have to put it on, like, a 40-foot	4:16:00	1	Q Why is that important to you that he had
4:14:15	2	trailer and haul it around.	4:16:03	2	still been sweating?
4:14:17	3	Q I see.	4:16:05	3	A If you stop sweating, there's a major sign
4:14:17	4	A So it's not very --	4:16:08	4	right there that you are suffering pretty bad.
4:14:19	5	Q Easy to get there?	4:16:10	5	Q Okay.
4:14:20	6	A Especially in places like Onaga, where	4:16:12	6	What happened? How -- do you remember
4:14:22	7	there's not a lot of access.	4:16:14	7	about what time it was that Mr. Diaz brought him
4:14:24	8	Q I got it.	4:16:17	8	back to the CPI?
4:14:25	9	A We would utilize it as a cooling station,	4:16:18	9	A Boy, I can't say. I didn't -- I don't
4:14:27	10	though, in other places that are more accessible.	4:16:20	10	know what time it was, no.
4:14:31	11	Q I got it.	4:16:22	11	Q What happened next?
4:14:31	12	A We have done that many times.	4:16:23	12	A Well, just kept checking on him. He was
4:14:33	13	Q Okay.	4:16:28	13	sitting in the truck with Charley, in the AC there.
4:14:33	14	So you have a conversation with	4:16:30	14	And we just kept checking back with him. I came
4:14:34	15	Matt Hughes. And he tells you that they are	4:16:33	15	over three, four times.
4:14:36	16	bringing Guillermo in -- you assume to the CPI, the	4:16:38	16	And then the last time I came over is when
4:14:40	17	cooling container there in Onaga.	4:16:40	17	he said, "i think I need to go to the hospital."
4:14:43	18	Did you have more of a conversation with	4:16:44	18	And I said, "All right. Charley, let's go."
4:14:44	19	Matt Hughes about who was bringing him in?	4:16:48	19	I jumped in the back seat and we drove
4:14:46	20	A No.	4:16:50	20	straight to the Onaga emergency room.
4:14:46	21	Q All right.	4:16:54	21	Q Okay.
4:14:49	22	What happened next?	4:16:56	22	And I think the records show that he
4:14:50	23	A I decided to just stay there and talk to	4:16:58	23	showed up there about -- let me just check so we
4:14:55	24	him once he got there.	4:17:03	24	are sure.
4:14:58	25	Q Okay.	4:17:21	25	Give me a minute here.
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4:14:58	1	Did you do that?	4:17:38	1	Let me just go off the record here one
4:14:59	2	A Uh-huh.	4:17:41	2	second -- oh, wait, here it is. Sorry.
4:14:59	3	Q How did he arrive?	4:17:44	3	I will represent to you that the medical
4:15:01	4	A He arrived as Charley Diaz -- in	4:17:46	4	record from Community Health Care Hospital in Onaga
4:15:04	5	Charley Diaz's truck.	4:17:49	5	shows that he was brought in on July 26th, 2015 at
4:15:08	6	Q Okay.	4:17:53	6	4:36 --
4:15:09	7	And what happened next?	4:17:55	7	A Okay.
4:15:09	8	A I went over to his door, opened the door,	4:17:55	8	Q -- "16:36" -- and admitted through the
4:15:12	9	talked to him -- said -- just asked him, you know,	4:17:58	9	emergency department at the hospital.
4:15:16	10	was he -- "Did you start feeling bad again?"	4:18:03	10	How long was Mr. Herrera there in
4:15:21	11	He said, "Yeah. I'm just tired. I think	4:18:08	11	Mr. Diaz's truck at the CPI unit job site briefing
4:15:23	12	I overdid it or something. I need to rest."	4:18:12	12	in Onaga between when he first showed up and when
4:15:23	13	I said, "Well, good. We got you off the	4:18:17	13	you all took him to the hospital?
4:15:23	14	track. You need to stay off the track. Just take	4:18:21	14	A No more than 20 minutes.
4:15:26	15	it easy. I brought him a Gatorade or a Squincher.	4:18:22	15	Q Okay.
4:15:34	16	And I asked him if he -- asked him if he -- did he	4:18:27	16	Did you go with them to the hospital?
4:15:38	17	need medical attention?	4:18:28	17	A Yes, I did.
4:15:40	18	"Do you feel like you need medical	4:18:29	18	Q Why?
4:15:42	19	attention? Are you cramping?"	4:18:29	19	A We were right in the back seat.
4:15:46	20	He said, "No, I just overdid it." He was	4:18:31	20	Q Why did you go?
4:15:50	21	sweating -- he was sweating heavily. You know, it	4:18:33	21	A To maybe assist if he needed assistance
4:15:53	22	was still damp. You could see his clothes were	4:18:36	22	getting out of the truck. And I just wanted to
4:15:56	23	nice and damp.	4:18:38	23	know that he was okay. I mean, he was a friend of
4:15:58	24	Q Okay.	4:18:41	24	mine. I wanted to make sure he was all right.
4:15:58	25	A So he had still been sweating.	4:18:46	25	Q Why didn't you all call an ambulance?

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14:18:49	1 A Because the Onaga ER is about one minute	14:21:07	1 wanted to make sure he was okay.
14:18:53	2 away from our job briefing area. Onaga is not very	14:21:09	2 And he just -- you may have talked with us
14:18:58	3 big. By the time -- I mean, if I would have called	14:21:12	3 the whole time we were there.
14:19:01	4 an ambulance, I would have waited longer upon the	14:21:15	4 Q How about Mr. Diaz? Did he go with you
14:19:03	5 ambulance to get there. I would have had already	14:21:17	5 and Mr. Herrera into the treatment room?
14:19:06	6 him in the ER myself -- hands down.	14:21:19	6 A He did at times. But then Charley had to
14:19:09	7 Q The cooling station is one minute from the	14:21:22	7 make phone calls, also. So I just stayed with him.
14:19:11	8 hospital?	14:21:24	8 And Charley would come and go. Because he had to
14:19:11	9 A It's not very far. It's a reference I'm	14:21:28	9 inform other individuals what's going on. And
14:19:15	10 making. I don't know if it's exactly one minute.	14:21:31	10 that's his job as a supervisor. He makes those
14:19:17	11 Onaga is not very big. You can drive through it in	14:21:33	11 calls to RMCC and stuff. So -- and to -- I'm sure
14:19:20	12 one minute probably.	14:21:38	12 he was talking to Joe and Mike and anybody else he
14:19:21	13 Q All right.	14:21:42	13 needed to talk to. But I stayed pretty much right
14:19:22	14 A It's just not a large town. You can get	14:21:46	14 there --
14:19:24	15 there much quicker.	14:21:46	15 Q Okay.
14:19:27	16 Q Is it -- am I understanding your testimony	14:21:47	16 A -- with him for a while.
14:19:29	17 right that the first time, to your recollection,	14:22:00	17 Q On arrival, the medical people describe
14:19:33	18 that Guillermo Herrera asked to go to the hospital	14:22:06	18 his chief complaint as "Heat exhaustion, dizzy,
14:19:35	19 was after he was sitting in Mr. Diaz's truck for 20	14:22:09	19 weak, confused."
14:19:40	20 minutes?	14:22:14	20 They give him a neurological assessment,
14:19:41	21 A Yes, sir.	14:22:17	21 that means -- to see how his brain was working.
14:19:41	22 Q First you heard?	14:22:21	22 "He was found as cooperative and lethargic."
14:19:42	23 A First time he mentioned anything about	14:22:26	23 Do you know what "lethargic" means?
14:19:45	24 needing medical attention to me. And he had been	14:22:28	24 A A little slow.
14:19:47	25 asked -- I asked him every single time I came back	14:22:30	25 Q Tired and slow?
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14:19:51	1 to the truck, "Are you sure you are all right? You	14:22:31	1 A A little slow.
14:19:54	2 don't need to go to the hospital? You need to see	14:22:32	2 Q Good.
14:19:57	3 a doctor?" Because if he needed to see a doctor, I	14:22:33	3 He was oriented to person -- in other
14:20:00	4 wanted to get him to the doctor. I would never not	14:22:34	4 words, he knew who he was, but he didn't know where
14:20:03	5 try everything in my will to get someone the help	14:22:39	5 he was, he didn't know what time it was and he
14:20:07	6 if they needed it.	14:22:41	6 didn't know why he was there?
14:20:08	7 Q Okay.	14:22:43	7 MR. SCHMITT: Objection, form.
14:20:09	8 Now, did you -- when you got to the	14:22:44	8 Foundation.
14:20:10	9 hospital, what did you do?	14:22:45	9 What's the question?
14:20:13	10 A I went inside and told them we were	14:22:45	10 BY MR. COX:
14:20:18	11 bringing a guy in for heat-related illness. They	14:22:45	11 Q Let's assume --
14:20:22	12 brought a wheelchair out. And then I went back out	14:22:49	12 MR. SCHMITT: What's the question?
14:20:26	13 and I assisted him just to make sure he didn't -- I	14:22:50	13 BY MR. COX:
14:20:29	14 didn't know how weak he was or anything. He hadn't	14:22:50	14 Q Let's assume that that's true. "Speech is
14:20:32	15 been standing. He was sitting in the truck -- so I	14:22:52	15 slow, patient is lethargic, patient is confused,
14:20:35	16 just wanted to be there to help him in the chair if	14:22:56	16 reports headache and vertigo."
14:20:38	17 he needed it. I helped him into the chair and then	14:23:00	17 I guess what I'm interested in is -- did
14:20:41	18 we took him right back in. We went with the	14:23:04	18 you make any of those observations of Guillermo
14:20:44	19 nurses. They let us go with him the entire way.	14:23:07	19 Herrera?
14:20:47	20 We went right back to his room and they got him on	14:23:08	20 What I'm trying to do is contrast your
14:20:50	21 a table.	14:23:10	21 view of him when he was in that truck and the
14:20:51	22 Q Did Mr. -- was Mr. Herrera in a condition	14:23:13	22 medical people's view of him a couple of minutes
14:20:54	23 where -- did Mr. Herrera invite you all to come	14:23:18	23 later.
14:21:01	24 with him into the treating room?	14:23:18	24 A That's what the medical people are saying,
14:21:04	25 A I don't recall him inviting us. We just	14:23:20	25 that he didn't know where he was?

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14:23:22	1	Q Right.	14:25:25	1	involved with what their job is. They are the
14:23:23	2	A No, that's not -- I'm sorry. But I -- I	14:25:28	2	professionals.
14:23:26	3	talked to Guillermo the whole time he was in that	14:25:28	3	Q I'm asking what you saw.
14:23:29	4	room. He wasn't confused to me. And I know the	14:25:30	4	A That's what I saw. They were giving him
14:23:32	5	guy better than they do. He was having a	14:25:33	5	fluids. They gave him a shot. I remember them
14:23:36	6	conversation with me. You know?	14:25:36	6	saying they were going to give him a shot of
14:23:38	7	We were talking about -- I can't recall	14:25:41	7	potassium. And they were testing to see the
14:23:40	8	exactly what, but I mean -- no, if he would have	14:25:45	8	electrolytes.
14:23:45	9	appeared confused, not knowing what time it was,	14:25:45	9	Q All right.
14:23:49	10	not knowing who he was or where he was, I would	14:25:46	10	And you were in the treatment room there
14:23:52	11	have taken him to the hospital myself, without even	14:25:48	11	in the emergency room there with him? Was he in a
14:23:55	12	letting him tell me "no" -- even if he refused it,	14:25:51	12	separate room or a place with curtains around it?
14:23:59	13	he would have been going. I mean --	14:25:54	13	Or what was --
14:24:01	14	Q What I'm asking -- did you -- I'm not	14:25:55	14	A From what I recall, it was a separate
14:24:04	15	asking you if you know what a neurological	14:25:56	15	room. It was its own room.
14:24:07	16	assessment is. I don't think that would be a fair	14:25:59	16	Q Okay.
14:24:09	17	question.	14:26:02	17	And how long were you with him?
14:24:10	18	Did you ever ask him, "Do you know what	14:26:08	18	A 30 minutes. 45 minutes.
14:24:11	19	time it is? Do you know where we are? Do you know	14:26:13	19	Q Okay.
14:24:15	20	why we are here?"	14:26:13	20	And he was there at the hospital longer
14:24:16	21	Did you ever ask him any of those	14:26:14	21	than that.
14:24:17	22	things?	14:26:15	22	Did you leave --
14:24:18	23	A No, I did not ask him those questions.	14:26:17	23	A Yes, I needed to go do other things and
14:24:20	24	No, no. I just had a general conversation with him	14:26:20	24	finish up for the day. Once I knew he was in the
14:24:23	25	on how he was doing. And he was responsive.	14:26:23	25	hospital and we had talked and he was feeling
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14:24:25	1	Q Right.	14:26:25	1	better. And he thanked me again. I knew Charley
14:24:26	2	What was he telling you when you would ask	14:26:28	2	was going to be there, so I left to fulfill the
14:24:28	3	him how are you doing? What would he tell you?	14:26:31	3	rest of my responsibilities.
14:24:31	4	A When he was in the truck?	14:26:33	4	Q Charley Diaz was going to be there?
14:24:32	5	Q No, no, there at the hospital. When you	14:26:35	5	A Yes, sir.
14:24:34	6	were with him in the hospital.	14:26:35	6	Q Did you ever speak with any nurse or
14:24:37	7	A Oh, well, once we got to the hospital, I	14:26:37	7	doctor about his condition?
14:24:40	8	didn't ask him too many more medical questions. I	14:26:39	8	A No, not after I left the hospital.
14:24:43	9	just -- you know?	14:26:42	9	Q No, no.
14:24:45	10	Q Not medical questions.	14:26:42	10	While you were at the hospital. Sorry.
14:24:46	11	What did you all talk about while you were	14:26:45	11	A Well, I had general conversation with the
14:24:48	12	in the room with him at the hospital?	14:26:47	12	nurses that were treating him. But I can't recall
14:24:50	13	A He told us, "Thank you a lot" -- for	14:26:49	13	what those conversations were.
14:24:52	14	bringing him. "Thanks. I think I needed to come.	14:26:50	14	Q Okay.
14:24:54	15	So thank you for bringing me."	14:26:51	15	A Mostly joking around. Like I said,
14:24:58	16	"It's no problem." We kept reassuring him	14:26:53	16	Guillermo was a joker and he was joking with them,
14:25:01	17	that we wanted to make sure he was okay and that he	14:26:56	17	also. He is pretty funny, actually. He is kind of
14:25:04	18	was all right.	14:27:02	18	witty. I think he enjoyed being witty.
14:25:04	19	Q And did you observe what the nurses or	14:27:05	19	Q Okay.
14:25:06	20	doctors did for him?	14:27:10	20	And did you ever learn what the doctors
14:25:09	21	A They gave him an IV. I believe they gave	14:27:12	21	diagnosed Guillermo's condition was when he was in
14:25:13	22	him a shot of potassium. They checked his	14:27:15	22	the emergency room on July 26th at 4:30 in the
14:25:17	23	electrolytes. He had to go to the bathroom a	14:27:21	23	afternoon?
14:25:19	24	couple of times -- once or so.	14:27:23	24	A I never heard an official diagnosis.
14:25:23	25	They were just doing -- I don't get	14:27:26	25	Q Did you ever hear a discussion that he

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14:27:32	1 is -- at the next day's job briefing after this	14:30:13	1 Mr. Herrera suffered the heat exhaustion?
14:27:34	2 injury to Mr. Herrera that the doctors had	14:30:17	2 A Am I aware of anyone that did an
14:27:38	3 diagnosed him with heat exhaustion? Was that ever	14:30:20	3 investigation?
14:27:42	4 discussed?	14:30:20	4 Q Yes, sir.
14:27:42	5 A It was never brought to my attention that	14:30:22	5 A No. The person that would have done it, I
14:27:44	6 he had suffered from heat exhaustion. We just made	14:30:24	6 have no knowledge of that.
14:27:47	7 sure we covered everything about the heat that we	14:30:25	7 Q Did you ever speak with Mr. Rolow about
14:27:49	8 do every single morning. We stressed it. We	14:30:28	8 what you knew about what had occurred?
14:27:53	9 explained the situation just like we do every	14:30:31	9 A Oh, yeah. I'm sure me and Mike Rolow had
14:27:56	10 single day. I'm sure one of the supervisors	14:30:34	10 a discussion about what went -- what happened that
14:28:05	11 talked. I can't recall which one it was. But I	14:30:38	11 day. I mean, he is my manager. I know I would
14:28:08	12 know one of them talked.	14:30:41	12 have talked to Mike Rolow. I can't say
14:28:11	13 And like I said, I gave my general morning	14:30:44	13 exactly -- I probably just explained everything
14:28:14	14 briefing the next day, which was -- in that time of	14:30:46	14 like I have explained to you here today on what
14:28:17	15 year, my normal briefing is all about the heat, all	14:30:49	15 happened -- and told Mr. Rolow everything that I
14:28:23	16 about staying hydrated, all about not drinking	14:30:51	16 witnessed that day and what we did, and why we did
14:28:27	17 alcohol at night, all about getting the proper	14:30:57	17 it.
14:28:30	18 amount of rest, all about your diet.	14:30:57	18 Q On the 8501, in July of 2015, whose
14:28:33	19 Q Okay.	14:31:06	19 responsibility was it to determine the heat index
14:28:34	20 I understand from before, you are kind of	14:31:09	20 that was going to occur that day?
14:28:36	21 a health nut -- I think that's the kind of word you	14:31:12	21 A Who?
14:28:39	22 used. A --	14:31:13	22 Q Who was -- who had the responsibility to
14:28:41	23 A Boy, I sure don't look like it anymore.	14:31:16	23 determine what the heat index was going to be?
14:28:43	24 Q You are doing pretty good.	14:31:19	24 A Well, we look that up every morning. We
14:28:45	25 A Yeah, I used to be very into fitness. And	14:31:22	25 look it up on the UP Web site.
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14:28:48	1 I do -- I'm trying to hold a little challenge on	14:31:26	1 I look that up every morning on the UP Web
14:28:51	2 our team right now. A little weight loss challenge	14:31:30	2 site. I post the heat index map on a television
14:28:56	3 just to try to get guys -- mainly myself -- to try	14:31:33	3 that we have. It's like a slide show for all of
14:29:00	4 to drop a few.	14:31:36	4 the employees to view that morning that show up a
14:29:01	5 Yeah -- and I talk to guys about their	14:31:38	5 little early. It shows what the forecast is going
14:29:06	6 health all the time. It's important, and these	14:31:41	6 to be. It shows you what the UP stock is doing.
14:29:08	7 guys do hard work. And some of these guys have	14:31:48	7 It has a bunch of stuff on it. And then I tell the
14:29:12	8 been out here doing it for a long time.	14:31:50	8 timekeeper what the map reads. And then throughout
14:29:18	9 It's a main concern. It's how you earn a	14:31:52	9 the day, though, that's done by the foreman and
14:29:18	10 living out here on the railroad -- with your body.	14:31:57	10 assistant foremen with an anemometer. We take the
14:29:20	11 If I could earn it with my mind -- I sure wouldn't	14:32:03	11 temperature, humidity. And then you use your QSM97
14:29:24	12 mind trying.	14:32:05	12 chart to determine the heat index, because it
14:29:25	13 Q Believe me. I think that's what I do and	14:32:08	13 changes throughout the day. In fact, the heat
14:29:28	14 it's not easy -- not that your job is.	14:32:08	14 index --
14:29:31	15 Tell me what training you have received	14:32:09	15 Q Right.
14:29:32	16 from the UP about the Federal Railroad Safety Act,	14:32:11	16 A -- goes up and down all day long.
14:29:41	17 what they call the "whistle-blower statute"	14:32:12	17 Q Is that something you would help them with
14:29:45	18 about -- have you ever received any guidance from	14:32:14	18 as the safety captain?
14:29:47	19 the Union Pacific Railroad about going into a	14:32:16	19 A Generally, I don't do that, no.
14:29:49	20 treatment room with an employee that's been injured	14:32:17	20 Q Okay.
14:29:51	21 on the job?	14:32:18	21 A I will check it if I -- I have checked it
14:29:54	22 A No, I have never received any training	14:32:23	22 before, but generally, that's not what I do. I
14:29:56	23 like that, no.	14:32:26	23 don't keep track of the heat index.
14:30:06	24 Q Are you aware of any investigation that	14:32:30	24 Q Who does?
14:30:08	25 was conducted by anyone on the UP to determine why	14:32:31	25 Who has the ultimate responsibility on the

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14:32:34	1 8501 -- on gang 8501 to determine what the heat	14:35:31	1 4"? You have got it.
14:32:38	2 index is at various times of the day?	14:35:33	2 Its price is \$111. And it's the basic
14:32:41	3 A That would be the foremen and assistant	14:35:39	3 meter.
14:32:44	4 foremen and EIC.	14:35:40	4 Do you see right down there where it says,
14:32:47	5 Q That's a bunch of people. Is there one	14:35:42	5 "Basic meter 85025"?
14:32:50	6 guy that does it? Or does everybody do it on their	14:35:47	6 A Yes, sir.
14:32:53	7 own?	14:35:47	7 MR. SCHMITT: Jim, just for the record, it
14:32:54	8 A Well, certain groups are located in	14:35:49	8 says something -- was this attached to that
14:32:56	9 certain areas. And sometimes the heat index is	14:35:53	9 discovery response or something you acquired
14:32:59	10 different in a certain area. So those people that	14:35:55	10 directly?
14:33:02	11 are in charge of those groups will take the heat	14:35:56	11 MR. COX: This is something I got off the
14:33:05	12 index, or they will call for someone to do it.	14:35:58	12 Internet about this model.
14:33:09	13 I mean, you can be in a cut where there's	14:36:00	13 MR. SCHMITT: All right.
14:33:11	14 absolutely no wind at all. And then a quarter mile	14:36:01	14 BY MR. COX:
14:33:16	15 down the track, you are going to be on the hill	14:36:01	15 Q It says, "Basic meter 85025 is the most
14:33:18	16 where the breeze is hitting you constantly all day.	14:36:05	16 basic mini environment meter in the sphere
14:33:21	17 So you have to have individuals in each group that	14:36:08	17 scientific product line. This meter is capable of
14:33:24	18 monitor those things.	14:36:12	18 measuring three different environmental parameters.
14:33:28	19 Q Are you familiar with the anemometer	14:36:15	19 With this meter, you can measure wind speed, air
14:33:30	20 that's used on that gang?	14:36:19	20 temperature and relative humidity."
14:33:32	21 A The anemometer, yes.	14:36:24	21 Then they go on to describe others. And
14:33:34	22 MR. COX: Would you mark that for me,	14:36:26	22 if you look at page 3 of 4 -- keep going.
14:33:35	23 please.	14:36:39	23 A Sorry. 2?
14:34:01	24 (Plaintiff's Exhibit 14 was marked	14:36:40	24 Q One more. That page (indicating).
14:34:01	25 for identification, a copy of which is	14:36:43	25 This is this multi-parameter comparison
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14:34:01	1 attached hereto.)	14:36:46	1 chart for these anemometers.
14:34:02	2 BY MR. COX:	14:36:49	2 Do you see on the left column there, "Mini
14:34:02	3 Q Oh, yeah, this is right. Sorry.	14:36:53	3 environmental quality meter, 850125"?
14:34:18	4 MR. COX: Dave, that's got the wrong	14:36:56	4 A I see it.
14:34:21	5 interrogatory. The interrogatory that's attached	14:36:57	5 Q They go out to others -- they increase in
14:34:22	6 to mine is the one where we ask him to identify the	14:37:00	6 cost. And they also increase in things that they
14:34:26	7 anemometer.	14:37:04	7 will measure for you.
14:34:28	8 MR. SCHMITT: Okay.	14:37:07	8 Do you see the next model up measures,
14:34:29	9 BY MR. COX:	14:37:10	9 "Wet bulb, air volume, wind chill, heat stress"?
14:34:29	10 Q Let me hand you what we have marked as	14:37:16	10 A I see that.
14:34:31	11 Exhibit 14.	14:37:17	11 Q On \$129 model?
14:34:31	12 Do you recognize that as a photograph of	14:37:20	12 A I do see that.
14:34:35	13 an anemometer?	14:37:22	13 Q I don't expect you to know that, I just
14:34:37	14 A An anemometer, yes. This is one style	14:37:24	14 wanted to document that through you.
14:34:40	15 anemometer that we use.	14:37:27	15 You don't have anything to do with which
14:34:43	16 Q I was told by a Union Pacific Railroad in	14:37:29	16 anemometer is bought by UP, is it?
14:34:46	17 Interrogatories -- written questions that I sent	14:37:32	17 A Sure. I order them. And this isn't the
14:34:48	18 them -- that this is the anemometer model that was	14:37:35	18 one I ordered. But we do have these models. We
14:34:52	19 in use on July 26th, 2015. Model SPR850025. And a	14:37:38	19 have had them for a time. I order a different
14:35:01	20 stock photo of the model is being produced	14:37:41	20 model than this because it's easier to use and it's
14:35:04	21 herewith. And that's that.	14:37:45	21 taller. And it's white, cylindrical.
14:35:07	22 What I want to ask you is -- attached to	14:37:48	22 Q Did anybody from UP ever ask you as part
14:35:10	23 that exhibit is a Web site describing that	14:37:50	23 of the discovery in this case what model anemometer
14:35:19	24 anemometer. Mini environmental meter.	14:37:54	24 was in use that day?
14:35:28	25 Flip to -- do you see where it says, "1 of	14:37:56	25 A No one has ever asked me what model we

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14:37:58	1 used, or anything like that. And I'm not sure what	14:40:13	1 people have their phones and especially in cases
14:38:01	2 model each individual out there had. But these	14:40:15	2 for emergency and stuff. If you were to ever use
14:38:05	3 aren't generally the ones I ordered. I probably	14:40:19	3 your phone, you were to exit the track 25 feet
14:38:07	4 have ordered these in the past at some point. I'm	14:40:22	4 before you were to ever use your phone.
14:38:12	5 sorry. I'm covering that up.	14:40:24	5 Q Okay.
14:38:14	6 Q What do you order?	14:40:25	6 So any reading of any heat index or any
14:38:15	7 A I would have to go into my procurement	14:40:26	7 temperature would be 25 feet from the track?
14:38:19	8 system. I have -- just have a number of -- I have	14:40:31	8 A But then again, I don't know if anyone
14:38:23	9 a cheat sheet of all of supplies that I do order.	14:40:32	9 used a phone.
14:38:27	10 And it's a different one because it just gives you	14:40:34	10 Q If one were to use a phone, it would have
14:38:29	11 a better reading. It's a white one and it became a	14:40:37	11 to be 25 feet from the track?
14:38:33	12 big issue with the fire. It was never the biggest	14:40:39	12 A You could also ask someone to look out for
14:38:39	13 issue was heat.	14:40:42	13 you. It would be the same as taking a picture on
14:38:40	14 The anemometers really came into play when	14:40:45	14 the track or a video. Like I still do that to this
14:38:42	15 we started to do the fire risk assessment --	14:40:47	15 day. I go up on the track. I'm authorized to have
14:38:45	16 because fire assessment became so huge years ago.	14:40:51	16 my phone. And I would utilize my phone to record
14:38:50	17 And the white one that I found just worked better.	14:40:54	17 something, so I can send it to a supplier or a tool
14:38:52	18 And the guys preferred them because they would fire	14:40:54	18 welder or anything like that and I just have to
14:38:52	19 up quicker. And then they gave better readings --	14:40:56	19 make sure everyone around me knows that I am going
14:38:55	20 and they were easier to read.	14:40:58	20 to be using my phone and that I have got a lookout.
14:38:58	21 But we have used these, I just can't say	14:41:02	21 It's basically just to keep people from
14:39:00	22 what was used by what foreman or assistant that	14:41:04	22 walking down the track talking on your phone. I
14:39:02	23 day. I don't know which anemometer they used.	14:41:07	23 mean, you can still utilize the phone if you need
14:39:06	24 Q Okay.	14:41:10	24 to.
14:39:09	25 A Back then, we also were still allowed to	14:41:10	25 Q I understand that.
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14:39:13	1 have your cell phone. I don't know if someone	14:41:11	1 A In the case of an emergency, also. So
14:39:18	2 checked their current location with their cell	14:41:13	2 they could have been right there on the track
14:39:23	3 phone.	14:41:16	3 checking the heat index. They could have. They
14:39:24	4 Q Do you have any understanding of how a	14:41:18	4 could have been using this (indicating). They
14:39:25	5 cell phone determines a heat index?	14:41:19	5 could have been using the light bulb. They could
14:39:29	6 A Well, they can give you the heat index for	14:41:22	6 have been using their phone.
14:39:33	7 your location.	14:41:23	7 Q You don't -- all right.
14:39:33	8 Q But --	14:41:25	8 Is that let's go back to Weather Bug. Is
14:39:34	9 A It would more be used like if you were	14:41:27	9 that an app?
14:39:37	10 right in Onaga because you get your weather report	14:41:28	10 Forgive my ignorance. Is that --
14:39:40	11 off of Weather Bug. And it tells you the	14:41:31	11 A It's just an app that I use in the morning
14:39:42	12 temperature and humidity right there off Weather	14:41:33	12 to pull up the projected forecast for the day and
14:39:45	13 Bug. I don't know if people ever did use it. But	14:41:35	13 the weekly forecast every single day.
14:39:48	14 it's possible, because we were allowed to have cell	14:41:39	14 Q Is what you post -- do you post the
14:39:50	15 phones back then. Someone might have checked it	14:41:42	15 temperature that it's supposed to be, the high
14:39:52	16 that way.	14:41:45	16 temperature it's supposed to be or the heat
14:39:53	17 Q In July of '15, could you all have your	14:41:47	17 index?
14:39:56	18 phones on the track -- July of '15?	14:41:47	18 A It will have all of them.
14:40:00	19 A Do you mean July 25?	14:41:50	19 Q Is that something you get off of Weather
14:40:01	20 Q Yeah.	14:41:53	20 Bug?
14:40:03	21 A 2015?	14:41:53	21 A Few from my TV, yeah. For my TV display.
14:40:04	22 Q Yes, sir.	14:41:58	22 For my news presentation in the morning, yeah.
14:40:04	23 A Cell phone policy had not come out until	14:42:01	23 Q Where does that come from? What
14:40:07	24 this year. I mean, there were -- you weren't	14:42:03	24 temperature and relative humidity are they
14:40:11	25 supposed to have your phone on the track. But	14:42:07	25 measuring to give you the measurement on the TV?

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4:42:09	1	A It's projected.	4:44:26	1	pressure system?
4:42:10	2	Q I understand.	4:44:27	2	A Well, it's just the United States. And
4:42:11	3	But you make it sound like it's a UP	4:44:28	3	it's got red, yellow -- some -- and you just go off
4:42:14	4	channel.	4:44:33	4	the color chart that's above it.
4:42:14	5	A It's not a UP channel. It's a slide show	4:44:34	5	Q Does the color chart correspond to the
4:42:18	6	that I cut and copy. I snip into it.	4:44:37	6	color chart on the heat index in your training
4:42:24	7	Q From?	4:44:39	7	documents?
4:42:25	8	A Then I play a slide show. Each slide runs	4:44:40	8	A No, that's a different -- the heat index
4:42:29	9	15 minutes. But they are slides that I have	4:44:42	9	chart on our -- in the QSM97 goes off the numbers,
4:42:31	10	personally gotten that morning off the Internet and	4:44:50	10	and then the -- I don't think it corresponds, no.
4:42:34	11	all -- it's like taking a photo of --	4:44:54	11	Because there's orange, yellow, and red -- or
4:42:36	12	Q I got it.	4:44:59	12	yellow, orange and red is the sequence, I believe.
4:42:38	13	A And the photo goes up on the TV.	4:45:03	13	Yellow, orange, red. But on the heat index map on
4:42:41	14	Q What I'm trying to get at is what is the	4:45:06	14	the UP Web site, there's some purple, and some
4:42:43	15	source of your calculations of temperature? Is it	4:45:10	15	white, and some red and some dark red.
4:42:48	16	from the Onaga area, for example?	4:45:13	16	Q But this map gives you the heat index for
4:42:51	17	A Yeah, whatever town we are in, whatever	4:45:16	17	the area?
4:42:53	18	area we are working in. Like, this morning it's	4:45:17	18	A The projected heat index for your area.
4:42:56	19	for Redlands -- Redlands, California. Weather Bug	4:45:19	19	Q Do you have any memory of what the
4:42:59	20	you type in, "Redlands, California" and pull it up.	4:45:21	20	projected heat index was for the Onaga, Kansas area
4:43:04	21	Q And it tells you what?	4:45:26	21	on July 26th?
4:43:05	22	A Tells you the temperature in Redlands at	4:45:28	22	A I can't say for sure unless I saw a job
4:43:07	23	that time right there. The humidity, when the sun	4:45:30	23	briefing sheet.
4:43:10	24	is going to come up, when it's going to go down,	4:45:31	24	Q Okay.
4:43:13	25	and then you pull up the weekly forecast, it tells	4:45:37	25	Here is a job briefing 8501 for July 26th
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4:43:16	1	us the high for the day, low for the day, if it's	4:45:40	1	that's Exhibit 4. And that has the projected heat
4:43:19	2	going to rain. And then I will usually cut five	4:45:45	2	index for July 26th.
4:43:23	3	days out. And you see the weather for five days in	4:45:47	3	A Yep. That's what it says, "Heat index
4:43:25	4	advance.	4:45:51	4	forecast, UP site 102."
4:43:26	5	Q I got you.	4:45:55	5	Q Okay.
4:43:27	6	A It's just a good tool for guys so they	4:45:56	6	A That's for the 26th, correct?
4:43:29	7	know, hey -- a lot of guys don't check and they	4:45:58	7	Q Right. That's the date Guillermo got
4:43:32	8	don't bring their rain gear on Thursday and it's	4:46:00	8	hurt.
4:43:37	9	projected to rain all day long. It kind of helps	4:46:01	9	A Yeah. That's your standard job briefing
4:43:40	10	in that way, too.	4:46:05	10	sheet right there, correct. Everybody uses it.
4:43:41	11	Q What I'm getting at is how is a	4:46:15	11	MR. SCHMITT: Jim, can we take a break?
4:43:43	12	calculation made to determine the heat index? You	4:46:17	12	MR. COX: Sure.
4:43:46	13	understand that's heat and humidity --	4:46:19	13	THE VIDEOGRAPHER: We are going off the
4:43:48	14	A I still pull that index for job briefing	4:46:20	14	record.
4:43:52	15	sheet off the UP Web site, heat index map.	15:02:30	15	(Recess taken.)
4:43:56	16	Q Describe this heat index map to me.	15:02:30	16	THE VIDEOGRAPHER: We are back on the
4:43:59	17	A Well, it's a map of the U.S. that shows	15:02:31	17	record.
4:44:03	18	all of the areas. It's color coded and then it's	15:02:34	18	BY MR. COX:
4:44:08	19	got temperatures all over it. You look to the area	15:02:35	19	Q Mr. Steely, thanks for the break.
4:44:10	20	where you are going to be working and you match it	15:02:38	20	I did locate the QS97 that I was looking
4:44:13	21	up with the color that you are in and that is the	15:02:41	21	for. Let me ask that that be marked.
4:44:16	22	projected heat index for that day in your area.	15:03:00	22	(Plaintiff's Exhibit 15 was marked
4:44:18	23	Q I see.	15:03:00	23	for identification, a copy of which is
4:44:19	24	Are these parts of the country? In other	15:03:00	24	attached hereto.)
4:44:21	25	words, is it, like, a high pressure system or a low	15:03:00	25	///

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15:03:01	1	BY MR. COX:	15:05:12	1	employees have suffered heat-related incidents, 16
15:03:01	2	Q Let me hand you what we have marked as	15:05:15	2	of these were serious enough to be reportable and
15:03:03	3	Exhibit 15.	15:05:19	3	11 resulted in lost time."
15:03:04	4	Can you identify that for us?	15:05:22	4	Did I read that right?
15:03:05	5	A This is our QS97, "Preventing Illnesses	15:05:23	5	A Yes, sir.
15:03:11	6	Due to Heat Stress."	15:05:24	6	Q Now, we have seen a -- this was in effect
15:03:12	7	Q And this is called "a safety meeting	15:05:29	7	in May of 2014.
15:03:15	8	package. Topic: Preventing Illnesses Due to Heat	15:05:33	8	Does the UP -- does the UP keep track of
15:03:20	9	Stress."	15:05:36	9	or did it ever furnish you any information as a
15:03:22	10	Am I reading that right?	15:05:39	10	safety captain of heat-related incidents since May
15:03:22	11	A Yes, sir.	15:05:46	11	of '14 to July of '15?
15:03:23	12	Q Why don't you just hold that up to the	15:05:52	12	A Not to my knowledge.
15:03:26	13	camera, if you would. So when the jury sees it in	15:05:55	13	Q We have seen an e-mail from Mr. Martinez
15:03:29	14	the courtroom, we will be sure we know what we are	15:05:58	14	who you recognize as the director of Rail North, I
15:03:32	15	talking about.	15:06:02	15	think -- am I right on that?
15:03:34	16	A (Witness complies.)	15:06:04	16	A He is the director of Rail Northwest,
15:03:36	17	Q Thank you.	15:06:08	17	Louis Martinez.
15:03:37	18	This is effective May 2015. This contains	15:06:10	18	Q Right.
15:03:40	19	the Leaders' Guide.	15:06:11	19	A Yes.
15:03:42	20	What does that mean, the "Leaders' Guide."	15:06:12	20	Q We saw an e-mail where he advised that
15:03:46	21	Front page. Do you see right there	15:06:13	21	there had been -- this e-mail is dated July
15:03:48	22	(indicating)?	15:06:19	22	26th, '15, the date of Guillermo Herrera's injury.
15:03:48	23	A It's for our leaders.	15:06:25	23	"This is the third heat incident we have
15:03:49	24	Q Is this to inform them how to instruct	15:06:27	24	had in the last four weeks."
15:03:52	25	employees?	15:06:30	25	Do you have any knowledge of any other
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15:03:58	1	A It is something that's covered every year.	15:06:32	1	heat incidents occurring in the four weeks before
15:04:02	2	It's been revised. That's the last revision date.	15:06:36	2	July 26th, 2015?
15:04:07	3	I'm sure.	15:06:42	3	A I'm sure they were discussed, but I don't
15:04:09	4	Q I'm -- what does the "Leaders' Guide"	15:06:45	4	recall.
15:04:13	5	mean?	15:06:46	5	Q You don't know names or gang numbers or
15:04:14	6	A Well, it's a way to inform your employees	15:06:48	6	anything like that?
15:04:16	7	of signs and how to prevent heat -- any illnesses	15:06:49	7	A I might have known a gang number at that
15:04:21	8	due to heat stress.	15:06:53	8	time. But that's been a year -- a year ago. I
15:04:23	9	Q Okay.	15:06:56	9	wouldn't remember every incident that we have
15:04:23	10	Let's go through a little bit of this.	15:06:59	10	covered.
15:04:30	11	I'm on the first page, but page two of the	15:07:00	11	Q Do you remember a man named
15:04:34	12	document. "Leaders' Instructions: The expectation	15:07:04	12	Charles Turner, an assistant or a foreman on 8501
15:04:36	13	is that each manager or supervisor will conduct	15:07:08	13	having a heat incident on July 24th or 25th? Were
15:04:39	14	this QSM training with all their employees before	15:07:14	14	you aware of that?
15:04:44	15	June 15th."	15:07:15	15	A I was.
15:04:46	16	Did I read that right?	15:07:16	16	Q What do you know about that?
15:04:47	17	A Yes, sir.	15:07:18	17	A I know that Mr. Turner was taken off the
15:04:47	18	Q And the primary purpose under,	15:07:24	18	track that day. I believe we were unloading -- it
15:04:49	19	"Introduction," it states the, "Primary purpose of	15:07:29	19	was our unload day.
15:04:53	20	this QSM session is to reduce the occurrence of	15:07:32	20	Q Okay.
15:04:57	21	heat stress illnesses while performing our work."	15:07:32	21	Taken off the track for what reason?
15:05:02	22	Did I read that right?	15:07:34	22	A From the heat.
15:05:04	23	A Yes, sir.	15:07:36	23	Q Now, we have had several -- or I have had
15:05:04	24	Q Then it goes on in that same paragraph to	15:07:39	24	several members of the gang describe to me the
15:05:07	25	say, "In the past five years, 30 engineering	15:07:42	25	change in heat from when you all were in California

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15:07:46	1 to when you all were in Onaga, Kansas.	15:10:20	1 Let's look at -- on page 8 -- I'm at the
15:07:50	2 How would you characterize the difference	15:10:27	2 paragraph that says, "Emergency Response."
15:07:50	3 in the heat from when you were last in California	15:10:32	3 The document says -- UP document says,
15:07:55	4 eight or -- seven or eight days before and the heat	15:10:34	4 "Our emergency response plans have been and will
15:07:58	5 when you all got to Onaga, Kansas?	15:10:37	5 continue to be an excellent planning tool for
15:08:01	6 A It's a different type of heat.	15:10:41	6 responding to critical or emergency situations. As
15:08:04	7 Q Tell me about that.	15:10:45	7 mentioned before, it is important that everyone
15:08:05	8 A One is a dryer heat and the other is a	15:10:48	8 knows the signs and symptoms of heat stress and
15:08:08	9 humid heat.	15:10:51	9 knows what to do should a coworker experience those
15:08:09	10 Q Which is the humid heat?	15:10:55	10 signs or symptoms. If we recognize the early signs
15:08:12	11 A Kansas.	15:11:00	11 of heat stress in ourselves or one of our
15:08:13	12 Q And how did it -- were you able to gauge	15:11:03	12 coworkers, the remedy may be as simple as taking a
15:08:15	13 how it affected you, that different heat in Onaga,	15:11:07	13 break in the shade or an air-conditioned vehicle or
15:08:23	14 Kansas?	15:11:10	14 drinking water to allow our bodies to cool. If the
15:08:23	15 A It affects everybody differently. Me, I	15:11:13	15 heat stress appears to be more severe, don't
15:08:26	16 can just tell -- I can tell if I'm in a humid heat,	15:11:16	16 hesitate in seeking immediate medical attention."
15:08:29	17 or I can tell if I'm in a dry heat. I have lived	15:11:20	17 Did I read that right?
15:08:32	18 in Texas. I have worked in Houston for a summer,	15:11:21	18 A Yes, sir.
15:08:36	19 so I know what humid heat is.	15:11:21	19 Q And then it describes symptoms and signs
15:08:38	20 Q True enough. Okay.	15:11:24	20 of heat exhaustion. Those are headache, dizziness,
15:08:40	21 So other than Mr. Turner, you don't know	15:11:28	21 weakness and flushing of the skin."
15:08:42	22 of any of the other heat incidents that were	15:11:35	22 As I understand it, Guillermo Herrera
15:08:45	23 mentioned by Mr. Martinez?	15:11:39	23 remained in Mr. Diaz's truck until you all decided
15:08:46	24 I'm not even saying Turner is one of those	15:11:43	24 to take him to the hospital?
15:08:49	25 three. I haven't learned that yet. I will learn	15:11:46	25 MR. SCHMITT: Well, object to the form.
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15:08:52	1 that from Martinez.	15:11:48	1 BY MR. COX:
15:08:55	2 Other than Mr. Turner on July 24th, were	15:11:48	2 Q Is that right?
15:08:57	3 there before July 26th, any other heat incidents on	15:11:50	3 A Yes, sir.
15:09:02	4 8501?	15:12:02	4 Q Let's look at Appendix A, a couple of more
15:09:03	5 A Not that I recall. I didn't even recall	15:12:06	5 pages in. It's on page 10 of the exhibit. This is
15:09:05	6 the Turner one until you just told me.	15:12:11	6 the heat index table that we have been talking
15:09:07	7 Q Okay.	15:12:13	7 about. And it's a measure of how hot it really
15:09:08	8 A But that brought it back.	15:12:19	8 feels when the humidity is factored in with air
15:09:26	9 Q Okay.	15:12:23	9 temperature. And it gives us an example.
15:09:26	10 If you will look on page 7 in Exhibit 15,	15:12:28	10 If the temperature is 91 and humidity is
15:09:30	11 it's Bates stamped -- 00303. That tells you and me	15:12:31	11 62, we go to temperature 91 -- let's use "90" and
15:09:36	12 that it came from UP.	15:12:37	12 62, that would put us about what, 96 or -- I can't
15:09:39	13 Is that an example of the heat index map	15:12:44	13 read that one and the yellow just above -- 106 or
15:09:42	14 that we were talking about earlier?	15:12:48	14 somewhere in that area? I'm sorry, I can't read
15:09:43	15 A Yes, that's it right there.	15:12:50	15 the --
15:09:45	16 Q All right.	15:12:51	16 A Well, if it was 62, we would round up. I
15:09:46	17 So this shows by kind of geographical area	15:12:54	17 would round up. I would go to 65.
15:09:50	18 on -- if we look at the bottom, "28 May 2013 at	15:12:56	18 Q Okay.
15:09:55	19 11:15, Greenwich Median Time" that the heat -- what	15:12:56	19 A Then 90 that would put us at 106.
15:10:02	20 the heat index will be on various parts of the	15:13:00	20 Q Got it.
15:10:05	21 country?	15:13:00	21 That's in the extreme heat procedures to
15:10:07	22 A Yes, sir. That's the projected heat	15:13:03	22 be implemented portion of the heat index.
15:10:09	23 index.	15:13:05	23 A Yes, sir.
15:10:10	24 Q All right.	15:13:06	24 Q Okay.
15:10:20	25 Okay.	15:13:17	25 And then we have got also Appendix B and

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15:13:21	1 C. Appendix C, "High Heat Procedures." Appendix D	15:15:46	1 about what the heat index actually was July 26th in
15:13:33	2 is "Extreme Heat Procedures." But in -- on -- I'm	15:15:50	2 a minute. But if the heat index were in the
15:13:44	3 looking at Appendix C, "High Heat Procedures." And	15:15:54	3 extreme heat procedures portion of the heat index
15:13:49	4 one of the instructions is the third bullet says,	15:15:57	4 table, was any discussion ever conducted on
15:13:52	5 "On larger gangs or where the work is spread out	15:16:01	5 July 26th, 2015 to schedule the work for cooler
15:13:56	6 over an extended distance, the designation of a	15:16:06	6 parts of the day?
15:14:00	7 buddy for each employee must be discussed in the	15:16:12	7 A No.
15:14:04	8 job briefing."	15:16:12	8 Q Why not? If you know.
15:14:07	9 Now, when you and I were talking earlier,	15:16:15	9 A Well, we have to do the work when it's
15:14:08	10 I had the impression that because the gang is	15:16:20	10 scheduled. And that kind of depends upon -- that's
15:14:10	11 spread out and people move in and out or rotate in	15:16:23	11 not up to us. That's -- the schedule is built for
15:14:13	12 and out of different rotations on a gang, a buddy	15:16:26	12 train traffic. It's built for different reasons.
15:14:17	13 system wasn't possible. Everybody is everybody's	15:16:30	13 I'm not a part of that.
15:14:20	14 buddy.	15:16:34	14 But we don't ever -- or I have never seen
15:14:21	15 But the instructions from the UP is, "On	15:16:38	15 us say we are going to pack up and move down
15:14:24	16 larger gangs or where the work is spread out over	15:16:42	16 to -- you know -- or move over to Wyoming right now
15:14:27	17 an extended distance, the designation of a buddy	15:16:47	17 because it's not as hot.
15:14:30	18 for each employee must be discussed in the job	15:16:49	18 Q Well, more about cooler parts of the day.
15:14:33	19 briefing."	15:16:52	19 Have you ever seen the steel gang say,
15:14:35	20 Can you reconcile those two for me?	15:16:54	20 "Okay. We are going to work from daylight until
15:14:36	21 MR. SCHMITT: Object to the form.	15:16:57	21 10 o'clock when it gets real hot and then let the
15:14:37	22 Go ahead.	15:17:02	22 heat of the day pass and then we are going to work
15:14:38	23 THE WITNESS: Okay.	15:17:05	23 in the evening"? Have you ever seen that occur?
15:14:38	24 Like you said, it says, "On larger gangs	15:17:07	24 Where the work is scheduled for cooler parts of the
15:14:40	25 or where the work is spread over an extended	15:17:09	25 day?
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15:14:43	1 distance, the designation of a buddy for each	15:17:11	1 A Well, we have worked nights before, but it
15:14:47	2 employee must be discussed in the job briefing."	15:17:14	2 wasn't due to temperature.
15:14:50	3 BY MR. COX:	15:17:15	3 Have you ever been out -- just have you
15:14:50	4 Q Right.	15:17:17	4 ever been outside in Onaga, Kansas at 6:00 a.m.?
15:14:51	5 A And that's what we do.	15:17:21	5 Q I can't say as I have.
15:14:54	6 Q So is what they are saying, "Okay. Bobby,	15:17:23	6 A It's not much different from noon. I
15:14:57	7 I'm going to be your buddy today. And I'm going to	15:17:25	7 mean, and then you would be working in the dark. I
15:15:00	8 keep an eye out for you"? Is that the buddy system	15:17:28	8 mean, it's -- the minute you walk out your door in
15:15:03	9 we are talking about?	15:17:32	9 Onaga, Kansas in the summertime, night or day, you
15:15:05	10 A No, it just says that a buddy for each	15:17:35	10 are going to start sweating. It's just a hot
15:15:07	11 employee must be discussed. And we inform everyone	15:17:39	11 place. I don't know if that had -- if if them not
15:15:11	12 that "Everyone in your group is your buddy."	15:17:43	12 doing that has to do with train traffic or
15:15:14	13 Because you are going to change groups. So it	15:17:46	13 what -- what their reasoning was. But we were
15:15:17	14 doesn't say that you must designate a buddy for	15:17:50	14 scheduled for those hours and that's what we worked
15:15:20	15 each employee individually. It just says, "a buddy	15:17:52	15 is all I can say.
15:15:24	16 for each employee must be discussed." And we cover	15:17:54	16 Q Okay.
15:15:27	17 that every morning --	15:17:59	17 A I'm sure they have a reason. It's above
15:15:28	18 Q Okay.	15:18:01	18 me.
15:15:29	19 A -- in the job briefing.	15:18:02	19 Q Above your pay grade?
15:15:30	20 Q Okay.	15:18:04	20 A Yes, sir.
15:15:31	21 I will agree that's the way you read it.	15:18:04	21 Q I'm familiar with that feeling.
15:15:34	22 Now, the next one says, "When practicable,	15:18:06	22 If you could mark that.
15:15:38	23 schedule work in hot areas for cooler months and/or	15:18:23	23 (Plaintiff's Exhibit 16 was marked
15:15:42	24 cooler parts of the day."	15:18:23	24 for identification, a copy of which is
15:15:45	25 I'm going to talk with you a little bit	15:18:23	25 attached hereto.)

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15:18:23	1 BY MR. COX:	15:20:51	1 get to you when you get your break. I may not get
15:18:23	2 Q Mr. Steely, these are other documents that	15:20:53	2 to you, you know, at that hot point in the day.
15:18:27	3 I was furnished by Union Pacific Railroad. They	15:20:56	3 Q Right.
15:18:29	4 marked as Exhibit 16. These are the receipts for	15:20:57	4 A So I set stuff out in the morning. I got
15:18:35	5 stuff bought at the Onaga Country Market. And if	15:21:02	5 two coolers. Every morning, this one (indicating)
15:18:39	6 you look closely, there were some things bought	15:21:02	6 is completely loaded with Gatorade, everyone can
15:18:44	7 July 24. Do you see that first receipt? It looks	15:21:02	7 grab two. One for the morning, one for the
15:18:50	8 like July 24, '15, sometime after two o'clock?	15:21:04	8 afternoon. And then the other one is filled with
15:18:54	9 A Yes, sir.	15:21:07	9 V-8 and fruit juices and waters and everything.
15:18:54	10 Q Then the next one shows some stuff bought	15:21:11	10 That's for you to have and start your day with
15:18:58	11 also -- this is, I guess, more stuff that was	15:21:13	11 right there during the job briefing. Everybody
15:19:02	12 bought on July 24 -- wait a minute. Maybe this is	15:21:15	12 grabs something from that cooler and has something
15:19:05	13 -- let me ask you this: Did you happen to buy this	15:21:18	13 during the job briefing. And then the fruit is on
15:19:08	14 stuff at the Onaga Country Market?	15:21:20	14 the other table.
15:19:11	15 A I'm sure that was me.	15:21:21	15 Q Okay.
15:19:13	16 Q Okay.	15:21:23	16 A And everybody grabs a couple of pieces of
15:19:14	17 So you can explain to me these receipts a	15:21:24	17 fruit. And I try to get enough to where I don't
15:19:18	18 little bit?	15:21:27	18 have to go to the store every day. That's a big
15:19:18	19 A Well, the timekeeper would have been with	15:21:30	19 purchase. I have come out of the Wal-Mart with
15:19:21	20 me, too, because he is the purchaser.	15:21:34	20 four shopping carts by myself. You know, it's hard
15:19:24	21 Q He is the one that writes the check or has	15:21:39	21 pushing all of that Gatorade around.
15:19:26	22 the credit card?	15:21:43	22 Q Help me with this. Here is a -- it looks
15:19:28	23 A Yes, sir. But I generally stock it all	15:21:46	23 like July 25 you bought Gatorade, Berry Rain and
15:19:29	24 and pass it out and things like that.	15:21:50	24 all of that stuff.
15:19:32	25 Q Okay.	15:21:52	25 Do you see the one I'm on? It's on the
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15:19:33	1 Are you buying it day-by-day? Are you	15:21:53	1 second page.
15:19:36	2 stocking up ahead? How does that work? There's	15:21:55	2 A Okay. Yeah.
15:19:39	3 how many people on the gang?	15:21:56	3 Q And then it looks like that was done at
15:19:41	4 A Right now?	15:22:01	4 1:47. And then on July 26 -- let's see what I can
15:19:41	5 Q No, July of '15.	15:22:12	5 tell -- do you have any way of knowing this third
15:19:43	6 A No, not sure of the exact count. I know	15:22:19	6 page -- is that stuff that was bought on July 26th?
15:19:49	7 we were a little short. But in general, what I try	15:22:24	7 A It says "26 July 2013" at the very bottom.
15:19:51	8 to do is I try to buy enough that will last me four	15:22:29	8 Q I think it's going to be '15.
15:19:54	9 days. That way I only have to go -- but in Onaga,	15:22:32	9 A "2015." Sorry. It does say "26 July
15:19:57	10 it's different. We bought everything they had.	15:22:35	10 2015." And mine it looks like --
15:20:01	11 It's a small, little, tiny store. I cleaned them	15:22:38	11 Q Is that bought at 17:12 -- 5:12 in the
15:20:05	12 out. And the lady was ticked off -- I remember	15:22:44	12 afternoon?
15:20:08	13 because it was some weekend coming up and she was	15:22:47	13 A It doesn't look like a "17." So yeah,
15:20:11	14 mad that her other customers weren't going to have	15:22:49	14 that would be probably 17? 17:12? It looks like
15:20:14	15 any Gatorade. That, I do remember. She was not	15:22:56	15 the -- because the "1" in front of the "2," it
15:20:17	16 happy.	15:22:59	16 looks like the "1" in front of the "7" there.
15:20:17	17 Q So you bought out the Onaga Country Market	15:23:02	17 Q 5:12.
15:20:20	18 when you were shopping for these groceries?	15:23:04	18 Do you see these documents, they have got
15:20:24	19 A Pretty much. I think we even went down to	15:23:05	19 it circled "8," "9," "10" on the top right-hand
15:20:28	20 Wamego and purchased another in Wamego, also.	15:23:09	20 corner?
15:20:32	21 That's what I try to do. I try to buy enough that	15:23:09	21 A Yep.
15:20:36	22 I can stock each cooler with enough sports drinks,	15:23:09	22 Q And then in the bottom right-hand corner,
15:20:43	23 the G2 Gatorade, that each employee gets two. That	15:23:12	23 it's going page 8, 9, 10 out of 29.
15:20:45	24 way they can take them with them. I don't like to	15:23:17	24 Did you -- is it you or did you send this
15:20:48	25 go through and pass things out because I might not	15:23:19	25 to somebody from the UP?

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15:23:21	1	A Did I send this to somebody?	15:25:42	1	goes on the back with a type --
15:23:23	2	Q Yes.	15:25:43	2	A With a tube that comes around.
15:23:24	3	A These would -- I'm sure that this right	15:25:45	3	Q And you got eight of those on July 1st?
15:23:26	4	here came from Matt Hughes Visa log.	15:25:48	4	A Yes, sir.
15:23:31	5	Q His what -- oh, Visa log?	15:25:48	5	Q That's when you all were in California?
15:23:33	6	A Yeah, his report of expenditures for him.	15:25:51	6	A I'm -- yes.
15:23:36	7	Q Got it. Okay.	15:25:52	7	Q Do you see the state says "CA"?
15:23:39	8	A And yeah, if it says 17:12, I'm sure I	15:25:57	8	A Yes, "CA."
15:23:44	9	probably wouldn't have purchased that then. I bet	15:25:57	9	Q So who got the CamelBaks? Or were they
15:23:46	10	that was Matt because I probably was with	15:26:01	10	distributed? Or do you know?
15:23:49	11	Guillermo -- I would have been with Guillermo	15:26:02	11	A Sure. I can't say exactly who got them.
15:23:51	12	after --	15:26:04	12	But I'm seeing the quantity of eight, generally
15:23:52	13	Q At the hospital?	15:26:07	13	that goes for my eight-man guys because they are in
15:23:54	14	A -- we had taken him in. And I probably	15:26:10	14	satellites and they don't have access to coolers
15:23:57	15	called Matt and said, "Hey, you are going to have	15:26:14	15	and they have to be able to drink all day long, so
15:23:59	16	to buy all of the stuff for tomorrow."	15:26:17	16	they wear the CamelBaks when they are in the
15:24:02	17	Q Okay.	15:26:21	17	eight-man because they move back and forth.
15:24:04	18	One -- all right. Now let's -- let me	15:26:23	18	Machine operators can stop and get up and go to
15:24:06	19	just ask you about this one previously.	15:26:26	19	their cooler. There's no access for them to do it.
15:24:25	20	(Plaintiff's Exhibit 17 was marked	15:26:30	20	Q Tell me again what the eight-man is, what
15:24:25	21	for identification, a copy of which is	15:26:32	21	it does.
15:24:25	22	attached hereto.)	15:26:33	22	A Clipping machine. It puts clips and
15:24:26	23	BY MR. COX:	15:26:35	23	biscuits on the new rail.
15:24:26	24	Q This is Exhibit 17. It is a general	15:26:38	24	Q Okay.
15:24:29	25	transaction inquiry between the dates July 1, 2015	15:26:38	25	Here is another CamelBak -- on July 7th,
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15:24:34	1	and July 31, 2015. And it's got the dates and	15:26:42	1	five of them?
15:24:40	2	the -- do you know what "TRNCD" is, next column?	15:26:43	2	A Yep.
15:24:47	3	Right up there (indicating).	15:26:44	3	Q Who did those go to?
15:24:51	4	A Huh, I don't know what that is.	15:26:45	4	A I can't say for sure who they went to.
15:24:53	5	Q Do you know what the "Consignee 32641"	15:26:47	5	But once people see someone wearing a CamelBak,
15:24:56	6	is?	15:26:51	6	they tend to want one. It's mostly for ground
15:24:59	7	A No, I don't.	15:26:56	7	personnel. I don't give the CamelBaks to machine
15:25:00	8	I'm assuming that's Matthew Hughes.	15:27:00	8	operators because machine operators don't generally
15:25:02	9	That's probably a designated number for him.	15:27:03	9	need them. They can get up, go to the cooler and
15:25:05	10	Q Okay.	15:27:04	10	get a drink.
15:25:06	11	Then we see "item description" and "cost	15:27:05	11	It's mainly for ground personnel. When we
15:25:08	12	center E-8501."	15:27:05	12	are on wood tie equipment, all of my plate setters
15:25:11	13	Do we think that's your gang?	15:27:09	13	wear CamelBaks because they are between machines.
15:25:12	14	A That's our cost center.	15:27:12	14	And they don't have anything -- anywhere to carry
15:25:14	15	Q Then it describes stuff in quantity that	15:27:14	15	water or coolers around them, so they fill these
15:25:18	16	was bought.	15:27:18	16	CamelBaks up and they can just drink off them
15:25:19	17	Go through it with me. And let's see if	15:27:21	17	constantly. They hold approximately 60 ounces of
15:25:22	18	we can see the ones that relate to heat protection.	15:27:26	18	water. Couple liters.
15:25:26	19	A Okay.	15:27:28	19	Q I think most people are familiar with
15:25:27	20	Q I see the -- tell me the first one you see	15:27:31	20	CamelBaks.
15:25:32	21	on there. Because I'm not sure --	15:27:32	21	A That's what they are for, mostly ground
15:25:34	22	A Backpack, Fairway high visibility orange	15:27:34	22	personnel that don't have access to coolers as much
15:25:38	23	CamelBak.	15:27:38	23	as machine operators do.
15:25:38	24	Q Okay.	15:27:41	24	Q On July 25 and 26th, Guillermo Herrera was
15:25:41	25	That's, like, the bag of the water that	15:27:44	25	the P-car operator?

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15:27:46	1	A That's the position he was holding, I	15:29:41	1	A Okay. Head bandanna, Miracools, right
15:27:48	2	believe.	15:29:57	2	there.
15:27:48	3	Q What's next for heat protection and stuff?	15:29:58	3	Q How long do those last?
15:27:51	4	A Next unit on the list, neck shades, high	15:30:00	4	Are they something that they last for a
15:27:55	5	visibility.	15:30:02	5	few days? A day?
15:27:55	6	Q What are those? Fits all styles of hard	15:30:03	6	A No, we don't -- you are instructed to,
15:28:00	7	hats?	15:30:05	7	"Once you use a Miracool, please don't go put it
15:28:00	8	A Yes, sir. Basically like a towel that	15:30:09	8	back into somebody's cooler or something. It's
15:28:03	9	goes around your hard hat and it drapes down over	15:30:12	9	been around your sweaty neck all day. Please, take
15:28:06	10	your neck and keeps the sun off your neck, keeps	15:30:15	10	it, utilize it, throw it away."
15:28:10	11	your neck from getting sunburned, keeps you shaded.	15:30:18	11	If you wanted to keep yours for the next
15:28:13	12	It comes all of the way around and then you drop	15:30:20	12	day, you can resubmerge it into your own cooler, if
15:28:15	13	down right on the sides of your face and covers the	15:30:24	13	you wish to do so, but I encourage people to just
15:28:18	14	back of your neck.	15:30:28	14	throw them away. I have got plenty of them.
15:28:20	15	Q Do you know who got those?	15:30:31	15	Plenty. You can have a new one every single day.
15:28:21	16	A Everyone wears those, just about.	15:30:34	16	Q Okay.
15:28:23	17	Q Okay.	15:30:44	17	Tools --
15:28:24	18	Next is the cooling pad hard hat, it looks	15:30:45	18	A Shovel -- these going to get into tools
15:28:28	19	like?	15:30:47	19	now.
15:28:28	20	A Yep. Cooling pad hard hat that can be	15:30:56	20	Then there's water.
15:28:32	21	inserted into the hard hat. Each one of the	15:30:57	21	Q And that's a little ten-ounce bottle?
15:28:36	22	cooling stations -- I talked about Miracools	15:31:02	22	A They are.
15:28:39	23	earlier. I also have the cooling pads. Those are	15:31:03	23	Q And you have got 22 pallets of that.
15:28:42	24	all submerged in ice water. When you pass by the	15:31:05	24	Plenty of water on July 22nd?
15:28:46	25	tent, you can either get a Miracool -- which we	15:31:08	25	A We probably -- our trailer, we have a
Page 95			Page 97		
15:28:48	1	will probably see later on this list -- tie it	15:31:13	1	semi-trailer, so once we get down to one or two
15:28:49	2	around your neck or you can get a cooling pad and	15:31:16	2	pallets of water, we have ten more to put in -- or
15:28:52	3	insert it into the inside of your hard hat. They	15:31:21	3	six more, so we have always got it.
15:28:55	4	also work good in, like, if there was an emergency	15:31:23	4	Q All right.
15:28:58	5	situation, we would take the cold packs, because	15:31:24	5	Now -- so water is not an issue? There's
15:29:01	6	they are cold, and put them in the armpits for	15:31:27	6	plenty of water on this --
15:29:06	7	someone that was suffering from heat stress. I	15:31:29	7	A Oh, yeah.
15:29:06	8	actually think now that we might have done that for	15:31:30	8	Q Plenty of water, plenty of Gatorade,
15:29:06	9	Guillermo. I think we gave him some cold packs	15:31:33	9	plenty of opportunity for employees to hydrate
15:29:16	10	that I probably had at the job site.	15:31:37	10	themselves?
15:29:18	11	Q While he was --	15:31:38	11	A Yes, sir.
15:29:19	12	A And a Miracool. I'm sure when he came	15:31:39	12	MR. COX: Let's take a little break here
15:29:22	13	back, I gave him a Miracool so he could put it on	15:31:40	13	now. We are out of tape and we will come back to
15:29:25	14	his neck when he got there to the job briefing.	15:31:43	14	it in just a minute.
15:29:25	15	Q In --	15:31:46	15	THE VIDEOGRAPHER: We are going off the
15:29:27	16	A In Onaga.	15:31:47	16	record.
15:29:27	17	Q In Mr. Diaz's truck?	15:38:28	17	(Recess taken.)
15:29:28	18	A When he was sitting in the truck, I	15:38:28	18	THE VIDEOGRAPHER: This is the beginning
15:29:30	19	probably went and got him one and put it around his	15:38:29	19	of media number 2. We are back on the record.
15:29:32	20	neck.	15:38:33	20	BY MR. COX:
15:29:33	21	Q And the pads under his armpits?	15:38:33	21	Q Mr. Steely, I'm handing you what I have
15:29:34	22	A I don't know if I put pads under his	15:38:35	22	marked as Exhibit 18.
15:29:35	23	armpits, but that's what they are there for.	15:38:38	23	Here, let me hand you one that's marked.
15:29:40	24	Q Okay.	15:38:41	24	You are familiar with the Union Pacific
15:29:40	25	What's next?	15:38:43	25	Railroad Engineering Track Maintenance Field

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15:38:45	1 Maintenance Handbook.	15:40:40	1 Q The reason I asked earlier -- in the other
15:38:47	2 A Yes, sir.	15:40:43	2 case, you told me that you thought it was about ten
15:38:49	3 (Plaintiff's Exhibit 18 was marked	15:40:46	3 degrees hotter on the track.
15:38:49	4 for identification, a copy of which is	15:40:49	4 Does that seem about right to you?
15:38:49	5 attached hereto.)	15:40:51	5 A I was taught that from some old heads when
15:38:49	6 BY MR. COX:	15:40:56	6 I was coming up.
15:38:49	7 Q And I'm looking at Rule 7.3.3,	15:40:56	7 Q That it's 10 degrees hotter on the track?
15:38:55	8 "Relationship between ambient temperature and rail	15:41:00	8 A That generally it was about -- that the
15:38:59	9 temperature."	15:41:01	9 rail was -- I have actually never read that rule
15:39:00	10 Do you see that?	15:41:04	10 before. I'm glad you showed that to me. But I was
15:39:01	11 A Yes, sir.	15:41:08	11 taught that if it's the 90 out, the rail temp is
15:39:02	12 Q And we have established that -- our	15:41:11	12 going to be 100. That's what old heads taught me.
15:39:04	13 memory -- everyone's memory is that this was a	15:41:15	13 Back in the day, I used to run a heater car. And I
15:39:07	14 sunny day, July 26th? Is that your memory?	15:41:19	14 used to deal with rail temp all of the time with
15:39:16	15 A I recall it being overcast that morning.	15:41:21	15 the barometer.
15:39:20	16 My recollection is overcast.	15:41:24	16 Q Okay. All right.
15:39:23	17 Q Okay.	15:41:26	17 Then let me show you this: This is a
15:39:23	18 The PI report shows clear and the other	15:41:34	18 document from OSHA to which we were direct --
15:39:25	19 witness' memories were clear.	15:41:47	19 MR. COX: Let me ask you to mark that for
15:39:28	20 MR. SCHMITT: Object to the form. I mean,	15:41:48	20 me.
15:39:30	21 it's his testimony.	15:41:51	21 (Plaintiff's Exhibit 19 was marked
15:39:32	22 BY MR. COX:	15:41:51	22 for identification, a copy of which is
15:39:32	23 Q Okay.	15:41:51	23 attached hereto.)
15:39:32	24 What is your memory of the --	15:41:51	24 BY MR. COX:
15:39:35	25 A I recall that morning when I first talked	15:41:51	25 Q Let me hand you what I have had marked as
Page 99		Page 101	
15:39:37	1 to Mr. Guillermo, that it was -- I would say,	15:41:54	1 Exhibit 19. This is National Oceanic and
15:39:42	2 overcast.	15:41:57	2 Atmospheric Association National Weather Service
15:39:42	3 Q Let's look at this.	15:42:03	3 Heat Index available online through osha.gov.
15:39:44	4 "On a sunny day, the rail	15:42:08	4 And this is referenced in one of the UP
15:39:45	5 temperature will be approximately 30	15:42:10	5 training manuals, and I went to it because it's,
15:39:47	6 degrees Fahrenheit higher than the ambient	15:42:13	6 "Using the Heat Index, a Guide For Employees."
15:39:51	7 temperature. An ambient temperature of 80	15:42:18	7 It describes the heat index, uses the same
15:39:54	8 degrees Fahrenheit on a sunny day	15:42:21	8 heat index that is in the UP document that we
15:39:54	9 generally correlates to a rail temperature	15:42:23	9 talked about earlier. But it says, "Important
15:39:56	10 of approximately 110 degrees Fahrenheit.	15:42:26	10 Note," there at the bottom.
15:39:59	11 On cloudy days, the rail temperature will	15:42:29	11 I'm looking there at the bottom, it says:
15:40:02	12 be approximately 15 degrees Fahrenheit	15:42:31	12 "The heat index values were devised
15:40:05	13 higher than the ambient temperature. For	15:42:34	13 for shady, light wind conditions. And
15:40:07	14 example, if the ambient temperature is	15:42:37	14 exposure to full sunshine can increase
15:40:10	15 100 degrees Fahrenheit and it is cloudy,	15:42:40	15 heat index values by up to 15 degrees
15:40:12	16 the rail temperature will be	15:42:43	16 Fahrenheit. To account for solar load,
15:40:14	17 approximately 115 degrees Fahrenheit."	15:42:46	17 added precautions are recommended."
15:40:17	18 Did I read that right?	15:42:49	18 So were you aware that when you are using
15:40:19	19 A Yes, sir.	15:42:51	19 this heat index, if it's full sunshine that the
15:40:21	20 Q Now, in the -- I don't expect you to	15:42:57	20 heat index value is to be increased by 15 degrees
15:40:24	21 remember, but do you have an estimate of how much	15:43:02	21 Fahrenheit?
15:40:28	22 hotter it is on the track than it is away from the	15:43:03	22 MR. SCHMITT: Let me object to the form.
15:40:36	23 track?	15:43:04	23 It's an improper question. Foundation. This is
15:40:38	24 A An estimate? No, I don't have any	15:43:06	24 not a Union Pacific document. I mean, anybody did
15:40:39	25 estimate.	15:43:08	25 read what it says, Jim.

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15:43:10	1 MR. COX: Well, it ain't got to be a UP	15:45:00	1 front of him that he has not seen before and they
15:43:13	2 document to be relevant or admissible.	15:45:02	2 say what they say. Form and foundation.
15:43:16	3 BY MR. COX:	15:45:05	3 MR. COX: Part of training issue, David.
15:43:16	4 Q Do you see on there that it says,	15:45:09	4 BY MR. COX:
15:43:18	5 "Exposure to full sunshine can increase heat index	15:45:09	5 Q Now, Exhibit 20, do you also see at the
15:43:22	6 values by up to 15 percent Fahrenheit"?	15:45:12	6 bottom, "Heat Index Heat Disorders"?
15:43:26	7 MR. SCHMITT: Same objections.	15:45:15	7 "If the heat index is 130 or higher,
15:43:27	8 THE WITNESS: I see it.	15:45:19	8 heatstroke, sunstroke is highly likely with
15:43:28	9 BY MR. COX:	15:45:22	9 continued exposure"?
15:43:28	10 Q Okay.	15:45:23	10 MR. SCHMITT: Same objections. Document
15:43:29	11 Had you ever been taught that by anybody	15:45:24	11 speaks for itself -- from the National Weather
15:43:31	12 on UP before?	15:45:28	12 Service, apparently.
15:43:32	13 A This is what I have always gone off of.	15:45:29	13 BY MR. COX:
15:43:36	14 Q But this document, UP document we talked	15:45:29	14 Q Do you see that?
15:43:38	15 about earlier, it doesn't say anything about	15:45:30	15 A That's what it says.
15:43:41	16 exposure to full sunshine can increase heat index	15:45:31	16 Q Have you ever been taught that by the
15:43:45	17 values by up to 15 percent Fahrenheit.	15:45:33	17 Union Pacific Railroad?
15:43:50	18 What I'm asking is did you know that?	15:45:36	18 A This is what I have gone off of
15:43:52	19 MR. SCHMITT: Same objections. Also asked	15:45:38	19 (indicating).
15:43:54	20 and answered.	15:45:38	20 Q Okay.
15:43:54	21 THE WITNESS: This is what I always went	15:45:39	21 And there -- so the record is clear, you
15:43:56	22 off of. I never went off this (indicating). If it	15:45:42	22 are referencing the UPQSM Heat Stress Prevention
15:43:59	23 doesn't say that in here, I went off this. This is	15:45:46	23 Document, Exhibit 15, correct?
15:44:01	24 the document I've been trained on (indicating).	15:45:50	24 A Correct. This document (indicating).
15:44:03	25 ///	15:45:53	25 Q Have you ever been taught by the
Page 103		Page 105	
15:44:03	1 BY MR. COX:	15:45:55	1 Union Pacific Railroad that sunstroke, heat cramps
15:44:03	2 Q Okay.	15:45:58	2 or heat exhaustion is likely and heatstroke
15:44:04	3 So you didn't know about the 15 degree	15:46:02	3 possible with prolonged exposure or physical
15:44:07	4 heat index increase if it's full sun?	15:46:05	4 activity if the heat index is 105 to 130?
15:44:11	5 MR. SCHMITT: Same objections.	15:46:10	5 Have you ever been taught that by the
15:44:12	6 THE WITNESS: If it's not in here -- if	15:46:12	6 Union Pacific Railroad?
15:44:14	7 it's not in here (indicating), I don't know about	15:46:12	7 MR. SCHMITT: Form. Foundation.
15:44:15	8 it.	15:46:19	8 THE WITNESS: There might be something in
15:44:30	9 (Plaintiff's Exhibit 20 was marked	15:46:20	9 heat stress training that I don't recall at this
15:44:30	10 for identification, a copy of which is	15:46:23	10 time, but no, went off this document (indicating).
15:44:30	11 attached hereto.)	15:46:26	11 This is my -- has been my heat stress bible right
15:44:30	12 BY MR. COX:	15:47:12	12 here (indicating).
15:44:30	13 Q Mr. Steely, let me hand you what I have	15:47:14	13 (Plaintiff's Exhibit 21 was marked
15:44:33	14 marked as Exhibit 20, another document from the	15:47:14	14 for identification, a copy of which is
15:44:36	15 National Weather Service Heat Index.	15:47:14	15 attached hereto.)
15:44:43	16 If you see right there (indicating), this	15:47:14	16 BY MR. COX:
15:44:45	17 document also says, "Add up to 15 degrees if in the	15:47:14	17 Q Let me hand you what I have marked as
15:44:49	18 direct sun."	15:47:16	18 Exhibit 21. And I -- I understand your answer that
15:44:51	19 Do you see that?	15:47:20	19 that was your -- the UP document is your UP
15:44:52	20 A I see it.	15:47:24	20 training bible. But I do need to ask you again,
15:44:52	21 MR. SCHMITT: All right.	15:47:27	21 have you ever received any training from the
15:44:53	22 So, again, for the record, I'm going to	15:47:29	22 Union Pacific Railroad from this OSHA Technical
15:44:55	23 object on foundation. It's not a Union Pacific	15:47:32	23 Manual, Section roman numeral III, chapter IV,
15:44:58	24 record.	15:47:36	24 "Heat Stress."
15:44:58	25 I mean, Jim, you can put documents in	15:47:37	25 Have you ever seen this document before?

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15:47:38	1	A Not that I recall.	15:50:15	1	there's a new heat out -- new CBT training out.
15:47:42	2	Q I'm looking at -- okay. Well, you have	15:50:21	2	BY MR. COX:
15:47:46	3	never seen that before.	15:50:21	3	Q Very good.
15:47:47	4	Okay.	15:50:22	4	A But I don't recall it verbatim or
15:48:28	5	Let me hand you what I have marked as	15:50:24	5	anything.
15:48:30	6	Exhibit 22. This is OSHA NIOSH -- OSHA, as you	15:50:25	6	Q Let me put this in context. Sorry.
15:48:37	7	know, is Occupational Safety and Health	15:50:29	7	Had you ever before July 26th, 2015,
15:48:39	8	Association. And NIOSH, National Institute of	15:50:32	8	received that training from Union Pacific Railroad?
15:48:42	9	Occupational Safety and Health -- to federal	15:50:35	9	MR. SCHMITT: Same objections.
15:48:45	10	government agencies. I think NIOSH is -- I'm not	15:50:37	10	THE WITNESS: It's not in here.
15:48:50	11	sure. And OSHA certainly is.	15:50:41	11	BY MR. COX:
15:48:52	12	"Protecting" -- captioned, "Protecting	15:50:41	12	Q Again, not in here, we are talking about
15:48:55	13	Workers from Heat Illness."	15:50:44	13	Exhibit 15? The Union Pacific Railroad heat stress
15:48:58	14	It talks about heatstroke -- I'm looking	15:50:47	14	presentation, you have called that the --
15:49:01	15	at the bottom left right there.	15:50:51	15	A QSM --
15:49:04	16	It says, "Heatstroke is a life-threatening	15:50:56	16	Q Man --
15:49:07	17	emergency. Heat exhaustion is the next most	15:50:59	17	A Let me look at that real quick.
15:49:11	18	serious heat-related health problem." Right there	15:51:01	18	Q Sure. Take your time.
15:49:16	19	(indicating). "Symptoms of heat exhaustion:	15:51:08	19	A Basically, the same thing it says right
15:49:18	20	Headaches, nausea, dizziness, weakness,	15:51:13	20	here (indicating). It says right here
15:49:22	21	irritability, thirst, heavy sweating, elevated body	15:51:14	21	(indicating). "Symptoms and signs of heat
15:49:27	22	temperature. Decreased urine output."	15:51:16	22	exhaustion" -- what appear to be symptoms and signs
15:49:32	23	Then NIOSH and OSHA caution:	15:51:19	23	of heat exhaustion are listed -- these are listed.
15:49:32	24	"If a worker shows signs of possible	15:51:21	24	It says below, "Get person in shade, seek medical
15:49:33	25	heat exhaustion, workers with signs or	15:51:26	25	attention, if not improved."
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15:49:35	1	symptoms of heat exhaustion should be	15:51:28	1	It's kind of the same thing. I can't say
15:49:37	2	taken to a clinic or emergency room for	15:51:30	2	I haven't had the training. I haven't had it from
15:49:39	3	medical evaluation and treatment."	15:51:33	3	here but --
15:49:41	4	Did I read that document right?	15:51:34	4	Q Good point.
15:49:43	5	MR. SCHMITT: Objection, form.	15:51:35	5	A It is in the QS97. A lot of this stuff
15:49:44	6	Foundation. Simply a narrative. Document speaks	15:51:39	6	that you are saying is covered in it. It's just
15:49:46	7	for itself.	15:51:41	7	not the same as these documents.
15:49:48	8	(Plaintiff's Exhibit 107 was marked	15:51:44	8	Q Good catch.
15:49:48	9	for identification, a copy of which is	15:51:45	9	"Symptoms," on page 8 of the QS97 exhibit.
15:49:48	10	attached hereto.)	15:51:51	10	"Symptoms and signs of heat exhaustion:
15:49:48	11	BY MR. COX:	15:51:53	11	Headaches, dizziness, weakness, flushing
15:49:48	12	Q Did I read that right?	15:51:57	12	of the skin.
15:49:49	13	MR. SCHMITT: Same objections.	15:51:58	13	"Actions to take if this occurs:
15:49:50	14	THE WITNESS: What it says.	15:51:59	14	Get person in shade, start cooling
15:49:53	15	BY MR. COX:	15:52:02	15	the -- seek medical attention if symptoms
15:49:53	16	Q Have you ever seen this or received that	15:52:02	16	do not improve in 15 to 20 minutes."
15:49:55	17	training that regarding this -- the -- if a worker	15:52:06	17	Is that what the QSM says?
15:50:00	18	shows signs of possible heat exhaustion, that they	15:52:08	18	A That's what it reads.
15:50:03	19	are to be taken to a clinic or emergency room for a	15:52:09	19	Q All right.
15:50:06	20	medical evaluation or treatment?	15:52:30	20	And I think I'm winding down. Let me just
15:50:09	21	Have you ever received that training from	15:52:33	21	check my records here.
15:50:11	22	Union Pacific Railroad?	15:52:35	22	That's all I have, Mr. Steely. I
15:50:12	23	MR. SCHMITT: Same objection. Narrative.	15:52:37	23	appreciate your time today. Thanks.
15:50:13	24	Form. Foundation.	15:52:39	24	MR. SCHMITT: You bet.
15:50:15	25	THE WITNESS: It's possible because	15:52:42	25	I have no questions at this point. I will

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15:52:44 1 save -- or wait with my questions until the time of
 15:52:48 2 trial.
 15:52:49 3 We are done.
 15:52:51 4 MR. COX: All right.
 15:52:51 5 THE VIDEOGRAPHER: This is the end of
 15:52:53 6 media number 2. We are going off the record.
 15:52:58 7 MR. SCHMITT: Would you like to read and
 15:52:59 8 sign your deposition? Or you can waive that right.
 15:53:02 9 You just need to let our court reporter know what
 15:53:05 10 you would like to do.
 15:53:07 11 If you want to read and sign, we will get
 15:53:08 12 you the transcript and then you can read it over.
 15:53:13 13 MR. GARLAND: Then you have to sign it --
 15:53:14 14 MR. SCHMITT: I mean, sign it and then you
 15:53:16 15 can waive it.
 15:53:17 16 THE WITNESS: Just mail it to me?
 15:53:19 17 MR. SCHMITT: It would be mailed to you.
 15:53:21 18 MR. GARLAND: You can still have a copy of
 15:53:23 19 your transcript if you don't want to sign. But if
 15:53:25 20 you say you want to read and sign, then you have to
 15:53:27 21 get the signature page back to the court reporter
 15:53:32 22 within 30 days.
 15:53:33 23 THE WITNESS: Is it a big deal? I will
 15:53:37 24 waive it.
 15:53:39 25 MR. GARLAND: Do you want a copy of it?

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15:53:40 1 THE WITNESS: I wouldn't mind a copy of
 15:53:42 2 it.
 15:54:10 3 (Deposition concluded at 3:53 p.m.)
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1
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 7
 8 I, ROBERT STEELY, declare under
 9 penalty of perjury under the laws of the
 10 State of California that the foregoing is
 11 true and accurate.
 12 Executed at _____,
 13 California, this _____ day of _____,
 14 2016.
 15
 16
 17
 18
 19
 20
 21 ROBERT STEELY
 (Signature waived.)
 22
 23
 24
 25

1 REPORTER'S CERTIFICATE
 2
 3 I, VICTORIA IMHOF WERTZ, RPR, CSR NO.
 4 7999, Certified Shorthand Reporter, certify:
 5 That the foregoing proceedings were
 6 taken before me at the time and place therein set
 7 forth, at which time the witness was put under oath
 8 by me;
 9 That the testimony of the witness and
 10 all objections made at the time of the examination
 11 were recorded stenographically by me and were
 12 thereafter transcribed;
 13 That the foregoing is a true and
 14 correct transcript of my shorthand notes so taken.
 15 I further certify that I am not a
 16 relative or employee of any attorney or of any of
 17 the parties, nor financially interested in the
 18 action.
 19 Dated this 21st day of June, 2016.
 20
 21
 22
 23
 24 VICTORIA IMHOF WERTZ, RPR, CSR No. 7999
 25

1 REPORTER CERTIFICATION OF CERTIFIED COPY

2

3

4

5 I, VICTORIA IMHOF WERTZ, RPR, CSR

6 No. 7999, a Certified Shorthand Reporter in

7 the State of California, certify that the

8 foregoing pages 1 through 113 constitute a

9 true and correct copy of the original

10 deposition of ROBERT STEELY, taken on

11 June 9th, 2016.

12 I declare under penalty of perjury

13 under the laws of the State of California

14 that the foregoing is true and correct.

15 Dated this 21st day of June,

16 2016.

17

18

19

20

21

22

23 _____
VICTORIA IMHOF WERTZ, RPR, CSR No. 7999

24

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